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Cross Complainants City of San José  
9 and Debra Figone, in her official capacity

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SANTA CLARA

12 SAN JOSÉ POLICE OFFICERS  
13 ASSOCIATION,

14 Plaintiff,

15 v.

16 CITY OF SAN JOSÉ, BOARD OF  
17 ADMINISTRATION FOR POLICE AND  
FIRE RETIREMENT PLAN OF CITY OF  
18 SAN JOSÉ, and DOES 1-10 inclusive.,

19 Defendants.

20 AND RELATED CROSS-COMPLAINT  
21 AND CONSOLIDATED ACTIONS.

22  
23  
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**FILED**  
(ENDORSED)  
FEB - 7 2013  
DANIEL J. BARAJAS  
Chief Executive Officer/Clerk  
Superior Court of CA County of Santa Clara  
BY \_\_\_\_\_ DEPUTY  
L. Barajas

Case No. 1-12-CV-225926

[Consolidated with Case Nos. 112CV225928,  
112CV226570, 112CV226574, 112CV227864]

**DEFENDANTS' AND CROSS-  
COMPLAINANT'S REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT OF  
MOTION FOR SUMMARY  
ADJUDICATION OF ISSUES**

**VOLUME 1**

**EXHIBITS A TO C**

Date: April 23, 2013  
Time: 9:00 a.m.  
Dept.: 8

Complaint Filed: June 6, 2012  
Trial Date: None Set

1 Defendant City of San José hereby requests that the Court take judicial notice pursuant to  
2 California Evidence Code Sections 450 *et seq.*, and in accordance with California Rules of Court  
3 3.1113(l), 3.1306(c), and 3.1350(c)(5) of the following material, true and correct copies of which  
4 are attached hereto:

5 **VOLUME 1**

- 6 Exh. A San José City Charter: In effect May, 1965, As Amended through  
7 November 2012.
- 8 Exh. B Full Text of Measure B: Article XV-A Retirement: Public Employee  
9 Pension Plan Amendments – To Ensure Fair and Sustainable Retirement  
10 Benefits While Preserving Essential City Services (As Placed on the Ballot  
11 Pursuant to City Council Resolution No. 76158).
- 12 Exh. C San José Municipal Code, Chapter 3.28, “1975 Federated Employees  
13 Retirement Plan,” Sections 3.28.010 to 3.28.2770 [Current to June 30,  
14 2012].

15 **VOLUME 2**

- 16 Exh. D San José Municipal Code, Chapter 3.36 “1961 Police and Fire Department  
17 Retirement Plan,” Sections 3.36.010 to 3.36.3760 [Current to June 30,  
18 2012].

19 **VOLUME 3**

- 20 Exh. E California Assembly Concurrent Resolution No. 17, adopted in Assembly  
21 January 18, 1961 and in Senate January 18, 1961, approving amendment to  
22 the charter of City of San José to include Section 78b (“Discretionary  
23 Powers of Council Respecting Retirement”) of Article X, filed with the  
24 Secretary of State on January 24, 1961.
- 25 Exh. F Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted  
26 to the Electors of the City of San José, April 12, 1960, including  
27 “Argument in Favor of Proposition A.”
- 28 Exh. G California Assembly Concurrent Resolution No. 104, adopted in Assembly  
April 26, 1965 and in Senate April 28, 1965, approving Charter of the City  
of San José, voted for and ratified by the qualified voters of said city at a  
general municipal election held therein on the 13th day of April 1965, filed  
with the Secretary of State on May 4, 1965 (Containing Full Text of 1965  
Charter).

- 1 Exh. H Memorandum from Director of Personnel Fran Galloni to Honorable Mayor  
and City Council, dated May 6, 1986. "Retirement Benefit Increase."
- 2 Exh. I Memorandum from City Attorney Joan Gallo to Mayor and City Council,  
3 dated March 21, 1988, "Benefit Increases – Federated Retirement System."
- 4 Exh. J Memorandum from Frances Galloni to Mayor and City Council, dated  
5 February 24, 1988, "Administration's Report on Federated Retirement  
Benefit Increases."
- 6 Exh. K Memorandum to Mayor and City Council from Federated Board of  
7 Administration, dated February 24, 1988, "Federated Retirement Benefit  
Increases."
- 8 Exh. L City of San José Resolution No. 75635, "A Resolution of the Council of  
9 the City of San José Amending and Restating Resolution No. 72859  
10 Regarding the Supplemental Retiree Benefit Reserve of the Federated City  
Employees Retirement Fund, To Suspend the Distribution of Funds from  
the Reserve During Fiscal Year 2010-2011."
- 11 Exh. M City of San José Resolution No. 76204, "A Resolution of the Council of  
12 the City of San José Amending and Restating Resolution No. 75635  
13 Regarding the Supplemental Retiree Benefit Reserve of the Federated City  
Employees Retirement Fund, To Suspend the Distribution of Funds from  
the Reserve Through Fiscal Year 2012-2013."
- 14 Exh. N City of San José Resolution No. 70822, "A Resolution of the Council of  
15 the City of San José Approving the Methodology for the Distribution of  
Moneys in the Supplemental Retiree Benefit Reserve of the Police and Fire  
16 Department Retirement Fund," adopted January 29, 2002."
- 17 Exh. O Letter from Coats Herfuth & England to Retirement Boards Benefits  
18 Administrator Edward F. Overton, dated November 22, 1985, "SB650  
Study."
- 19 Exh. P Memorandum from Federated Board to Honorable Mayor and City Council,  
dated April 25, 1986, "Supplemental Retiree Benefits Reserve".

20 Exhibits A, B, E, and G are properly subject to judicial notice pursuant to California  
21 Evidence Code Section 451(a) (providing that courts may take judicial notice of "any charter  
22 described in Section 3, 4, or 5 of Article XI of the California Constitution").

23 Exhibits C, D, L, M, and N are properly subject to judicial notice under California  
24 Evidence Code sections 453 and 452(b) (providing that courts may take judicial notice of  
25 "legislative enactments issued by or under the authority of the United States or any public entity in  
26 the United States"). *See Trinity Park, L.P. v. City of Sunnyvale*, 193 Cal. App. 4th 1014, 1027  
27 (2011) ("The Evidence Code also expressly provides for judicial notice of a public entity's  
28 legislative enactments and official acts. Thus, we may take notice of local ordinances and the

1 official resolutions, reports, and other official acts of a city.”).

2 Exhibits F, H, I, J, K, O and P are properly subject to judicial notice as legislative history  
3 and governmental acts and records. Cal. Evid. Code §452(b), (c), & (h); *Kaufman & Broad*  
4 *Communities, Inc. v. Performance Plastering, Inc.*, 133 Cal. App. 4th 26, 31 (2005).

5 For these reasons, the City respectfully requests that the Court take judicial notice of the  
6 above-listed documents.

7 DATED: February 7, 2013

MEYERS, NAVE, RIBACK, SILVER & WILSON

8 By: 

9 Arthur A. Hartinger

10 Linda M. Ross

11 Jennifer L. Nock

12 Michael C. Hughes

13 Attorneys for Defendants and Cross-Complainant  
14 City of San José and Debra Figone, in her official  
15 capacity

16 2042929.1



# Exhibit A

# SAN JOSE



## CITY CHARTER

In effect May, 1965

Amended through November 2012

The foregoing instrument is  
a correct copy of the original  
on file in this office.

Attest:

TONI J. TABER

Acting City Clerk

Acting City Clerk of the City of San Jose  
County of Santa Clara, State of California

*[Signature]* 2/4/13, Deputy

SJRJN000001

# **SAN JOSE**



## **CITY CHARTER**

In effect May, 1965

As Amended through November 2012

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## **ARTICLE I INCORPORATION AND SUCCESSION**

### **SECTION 100. Name.**

The City of San José, in the County of Santa Clara, State of California, shall continue to be a municipal corporation under its present name of "City of San José."

### **SECTION 101. Boundaries.**

The boundaries of the City of San José shall continue as now established until changed in the manner authorized by law.

### **SECTION 102. Succession, Rights, Powers and Liabilities.**

The City of San José shall remain vested with and shall continue to own, have, possess, control and enjoy all property, rights of property and rights of action of every nature and description (including but not limited to all pueblo lands and pueblo rights) owned, had, possessed, controlled or enjoyed by it at the time this Charter takes effect, and is hereby declared to be the successor of the same. It shall be subject to all debts, obligations and liabilities which exist against the municipality at the time this Charter takes effect.

## **ARTICLE II POWERS OF THE CITY**

### **SECTION 200. General Powers.**

The City of San José shall have the power to make and enforce all laws and regulations in respect to municipal affairs, subject only to such restrictions and limitations as may be provided in this Charter and in the Constitution of the State of California. The City shall also have all other rights, powers and privileges which are not prohibited by, or in conflict with, the State Constitution or the Charter and which it would be proper to specifically set forth in this Charter even though such are not herein set forth. It shall also have the power to exercise any and all rights, powers and privileges heretofore or hereafter established, granted or prescribed by any law of the State, by this Charter or by other lawful authority, or which a municipal corporation might or could exercise under the Constitution and laws of the State of California.

The enumeration or specification in this Charter of any particular power shall not be held to be exclusive of or any limitation upon the generality of the foregoing provisions.

#### **SECTION 201. Special Powers.**

The City shall have the following special power: To acquire any property outside the City limits by eminent domain, or otherwise, for municipal purposes.

#### **SECTION 202. Procedures.**

The City shall have the power to act and may act pursuant to any procedure established by any law of the State, unless a different procedure is established by this Charter or by ordinance.

#### **SECTION 203. Continuity Of Government in Event of Disaster.**

In order to provide for continuity of City government during any emergency resulting from war, enemy-caused calamity or other disasters of whatever nature, and in order to otherwise handle any such emergency, the Council is hereby empowered, anything elsewhere in this Charter to the contrary notwithstanding, to:

- (a) Provide for the appointment or designation of persons to exercise the powers and discharge the duties of any City offices, whether elective or appointive, during any such emergency, in the event the regularly elected or appointed incumbents of said offices are killed, missing, disabled or for some other cause unable or unavailable to perform the functions and duties of their respective offices, until said incumbent officers perform or resume performance of their functions and duties or until, where an actual vacancy exists, a successor is elected or appointed, pursuant to other provisions of this Charter, to fill such vacancy;
- (b) Provide for the preservation of essential records needed to protect the rights of individuals and to conduct emergency operations;
- (c) Provide for the establishment of emergency locations for City government so that the City could continue to operate;
- (d) Provide for the formulation of plans to use all personnel, facilities and equipment of government for emergency actions;
- (e) Do such other things as may be authorized by the laws of the State of California for such purposes.

#### **SECTION 204. City Government - Ethics.**

The citizens of San José expect and must receive the highest standard of ethics from all those in the public service. City officers and employees must be independent, impartial and responsible in the performance of their duties and accountable to the members of the public.

*Added at election November 6, 1990*

## **ARTICLE III FORM OF GOVERNMENT**

### **SECTION 300. Form of Government.**

The municipal government established by this Charter shall be known as the "Council-Manager" form of government.

## **ARTICLE IV THE COUNCIL**

### **SECTION 400. Powers Vested in Council.**

All powers of the City and the determination of all matters of policy shall be vested in the Council, subject to the provisions of this Charter and the Constitution of the State of California.

### **SECTION 401. Composition of Council.**

The composition of the Council shall be as follows:

- (a) **NUMBER OF MEMBERS.** The Council shall consist of eleven (11) members, one of whom shall be the Mayor, each of whom shall have the right to vote on all matters coming before the Council.
- (b) **DISTRICTS.** Except as otherwise provided elsewhere in this Charter and excepting the Mayor who shall be elected at a Regular Municipal Election from the City at large, each member of the Council shall be elected at a Regular Municipal Election by one of ten (10) Districts designated by number within the City. The term "by Districts" shall mean the election of eligible persons, as defined in Section 404, to the office of member of the Council by the voters of each District alone.

*Amended at election November 7, 1978*

*Amended at election November 8, 1994*

### **SECTION 402. Mayor and Council Member Term Limits.**

The regular term of office of each member of the Council shall be four (4) years. The Mayor and Council members shall be subject to the following term limits:

- (a) **MAYOR.** No person who has been elected to the office of Mayor for two (2) successive four-year terms shall be eligible to run for election to the office of Mayor, nor to serve as such, for any additional successive term; but the above

shall not disqualify any person from running for election to the office of Mayor, nor from further service as Mayor, for any term or terms which are not successive; nor for any parts of terms which are not successive.

- (b) **COUNCIL MEMBER.** No person who has been elected to the City Council as a Council member in any Council District in the City for two (2) successive four-year terms, after the effective date of this Section, shall be eligible to run for election as a member of the Council in any Council District, nor appointed to serve as a Council member for any additional successive term. Any person appointed or elected to the City Council as a City Council member to fill an unexpired term of two years or less in length shall be eligible to serve two successive four-year terms upon the expiration of the unexpired term for which that person was appointed or elected. Any person appointed or elected to the City Council as a City Council member to fill an unexpired term of more than two years in length shall only be eligible to serve one successive four-year term. The above shall not disqualify any person from running for election to the Office of Mayor or for any term or terms which are not successive. The effective date of this Section shall be January 1, 1991.

*Amended at election June 2, 1970*

*Amended at election November 7, 1978*

*Amended at election November 6, 1990*

*Amended at election November 8, 1994*

### **SECTION 403. Elections by Districts.**

For the purpose of electing members of the Council, excepting the Mayor, the City shall be divided into ten (10) numbered Districts as nearly equal in population as practicable. The boundaries of the ten Districts shall be established initially by reference to that certain map of the City of San José, entitled "Election Districts of the City of San José", filed and displayed in the office of the City Clerk, and drafted according to data contained in the official census of the City as taken in 1975 and certified by the City Clerk. Thereafter the boundaries of such Districts shall be subject to alteration and change under the provisions of this Section.

Following the taking of each federal decennial census, commencing with the 1980 federal decennial census, the Council shall, by ordinance, redistrict the City into ten (10) numbered Districts. If time permits, such ordinance shall be enacted no earlier than three (3) months and no later than eight (8) months following receipt by the City Clerk of data containing an enumeration of population by blocks derived from such census. In no event shall such ordinance be enacted later than October 31 in the year following the decennial census.

The redistricting ordinance shall be adopted according to the provisions of Article VI, Section 604 of this Charter and shall become effective at the expiration of thirty (30) days after adoption of the ordinance; provided, however, that if the redistricting ordinance becomes effective on or after the first day on which nomination papers may be filed for an election to the office of member of the Council, excepting the Mayor, then the ordinance



shall not apply, or be deemed to apply, to that election or to the person elected to the office of member at such election.

By no later than February 1 in the year following the decennial census, the Council shall appoint an Advisory Commission whose purpose shall be to study and make appropriate recommendations with respect to such redistricting. This Advisory Commission shall consist of one (1) member from each District, who shall be appointed by the Council member from that District, and a Chairperson chosen from the City at large, who shall be appointed by the Mayor. The membership of the Commission shall be representative of the ethnic make-up of the City at large, to the extent practicable.

The Advisory Commission shall conduct at least three public hearings, at various locations in the City, concerning its recommendations regarding District boundaries, and shall submit its report and recommendations to the Council within one hundred twenty (120) days following its appointment.

The Council shall duly consider the report and recommendations of the Advisory Commission and in adopting any redistricting ordinance. However, the Council is required to adopt an ordinance within the period of time required under this Section even if the Advisory Commission fails to provide recommendations or reports as specified in this Section.

Except as provided hereinabove, such Districts shall be used for all elections of members of the Council, including their recall, and for filling any vacancy in the office of member of the Council, subsequent to the effective date of such ordinance and until new Districts are established.

Any territory which is annexed to or consolidated with the City but not included within a District shall, prior to or concurrently with completion of the proceedings therefor, be added to an adjacent District or Districts by the Council by ordinance, which shall become effective at the expiration of thirty (30) days after adoption and shall apply to all elections held on and after its effective date.

Any ordinance adopted by the Council and establishing, changing, or altering the boundaries of any District shall describe the new boundaries by reference to a map on file in the office of the City Clerk and/or by a metes-and-bounds description.

In any redistricting, the Council shall make the Districts as nearly equal in population as may be practicable, and may, in establishing the boundaries of the Districts, give consideration to (a) natural boundaries, street lines and/or City boundaries; (b) geography; (c) cohesiveness, contiguity, integrity and compactness of territory; and (d) community of interests within each District.

Upon any redistricting pursuant to the provisions of this Charter, each incumbent member of the Council will continue, during the remainder of the member's term, to hold office and to represent the District by which the member was elected prior to such redistricting,

notwithstanding any provision of Section 404 requiring a member to be a resident of the District represented by such member.

*Amended at election June 2, 1970*

*Amended at election November 7, 1978*

*Amended at election November 6, 1990*

*Amended at election June 7, 1994*

#### **SECTION 404. Eligibility.**

A person shall not be eligible to take office as a member of the Council, including Mayor, unless the person satisfies all of the following conditions:

- (a) The person must have been a citizen of the United States for at least one year immediately preceding the commencement of the term for which the person is elected or the date upon which the person is appointed.
- (b) The person must have been a resident of the City of San José and, excepting the Mayor, of the District represented by the person as member, for at least thirty (30) days immediately preceding the last day specified by law for the filing of nomination papers with the City Clerk for such office or, if appointed, preceding the date of the person's appointment to fill a vacancy.
- (c) If elected to office at a Regular Municipal Election, the person must have been a registered elector of the City of San José on the last day specified by law for the filing of nomination papers with the City Clerk for such office.
- (d) If appointed to such office, the person must have been a registered elector of the City of San José at the time of the person's appointment.

A person shall not be eligible to be a candidate at any election for any Council office, if the person would not be eligible under the above provisions of this Section to take office if elected. Any determination as to whether a person has met the eligibility requirements shall be made at the time the nomination papers are filed and at the time of taking office.

The incumbent must, at all times, during the term of office continue being:

- (a) a citizen of the United States;
- (b) a resident of the City of San José and, except as provided in Section 403, of the District which he or she represents;
- (c) and a registered elector of the City.

*Amended at election June 2, 1970*

*Amended at election November 7, 1978*

*Amended at election November 8, 1994*

#### **SECTION 405. Judge of Qualifications.**

The Council shall be the judge of the election and qualification of its members, including the Mayor, and of any other elective officer, and of the grounds for forfeiture or loss of their respective offices, and for that purpose shall have the power to subpoena witnesses, administer oaths and require the production of evidence. A member, or the Mayor, or the holder of any other elective office, charged with conduct constituting grounds for forfeiture or loss of his or her office shall be given, if he or she so demands, an opportunity to be heard in his or her own defense at a public hearing after reasonable notice to such members.

*Amended at election June 7, 1994*

#### **SECTION 406. Holding Other Office.**

Except as authorized by this Charter, no member of the Council shall hold any other City office or City employment, other than Mayor, during the term for which he or she was elected to the Council; provided and excepting, however, that a member of the Council may become a member of any advisory, administrative or governing body of any special purpose district, entity, organization or committee when such is authorized by State law or where the offices are not incompatible.

*Amended at election June 7, 1994*

#### **SECTION 407. The Council; Compensation.**

Each member of the Council, including the Mayor, shall be paid as compensation for his or her services as a member of the Council, for each calendar month during which he or she is a member of the Council, a monthly salary which shall be established by ordinance adopted pursuant to and in accordance with the provisions hereinafter set forth in this Section. No salary shall be established for any member of the Council, including the Mayor, except as provided in this Section.

Between March 1st and April 30th of every odd-numbered year, the Council Salary Setting Commission shall recommend to the Council the amount of monthly salary which it deems appropriate for the members of the Council, including the Mayor, for the two year period commencing July 1 of that odd-numbered year. The amount recommended for each member of the Council shall be the same, except that the amount recommended for the Mayor may exceed that of the other members of the Council. The monthly salary shall be in an amount which takes into account the full time nature of the office and which is commensurate with salaries then being paid for other public or private positions having similar full time duties, responsibilities and obligations.

No recommendation shall be made except upon the affirmative vote of three (3) members of the Commission. Failure of the Commission to make a recommendation in any year within the time prescribed shall be deemed to mean a recommendation that no change be made.

Each biennial recommendation, together with the reasons therefor, shall be made in writing. Before it submits any such recommendation to the Council, the Commission shall conduct at

least one public hearing on the matter. When such a recommendation has been submitted to the Council, it shall not thereafter be amended by the Commission.

The Council shall, by ordinance, which shall be subject to the referendum provisions of this Charter, adopt the salaries as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount.

No more than one salary setting ordinance shall be adopted on the basis of any biennial recommendation, provided that the Council may, at any time, by ordinance, reduce the salaries of the members of the Council, including the Mayor. In any salary setting ordinance adopted hereunder, the salaries for each member of the Council shall be the same, except that the salary of the Mayor may exceed that of the other members of the Council. Salaries established by ordinance adopted pursuant to the provisions of this Section shall remain in effect until amended by a subsequent ordinance adopted pursuant to the provisions of this Section.

For each member of the Council, except the Mayor, a sum, as established by the Council Salary Setting Commission, shall be deducted from the salary of such member for each regular meeting of the Council, other than regular adjourned meetings, which he or she fails to attend in each such calendar month; provided, however, that such deduction shall not be made for his or her failure to attend any meeting during which he or she is away on authorized City business, or from which he or she is absent because of his or her own illness or the illness or death of a close family member. No deduction shall be made from the Salary of the Mayor because of his or her failure to attend any Council meeting.

*Amended at election June 7, 1966*

*Amended at election June 5, 1973*

*Amended at election November 4, 1980*

*Amended at election November 4, 1986*

#### **SECTION 408. Reimbursement.**

The members of the Council and the Mayor shall receive reimbursement, if and to the extent such is authorized by the Council, for expenses incurred in the performance of their duties or functions of office.

#### **SECTION 409. When Office Becomes Vacant.**

The office of a member of the Council or of the Mayor becomes vacant on the happening of any of the following events before the expiration of such officer's term:

- (a) The death of the incumbent;
- (b) Insanity of the incumbent, when determined by a final judgment or final order of a court of competent jurisdiction;
- (c) Resignation of the incumbent;

- (d) The incumbent ceases to satisfy any requirements for retention of his or her office which are set forth elsewhere in this Charter;
- (e) Removal of the incumbent from office;
- (f) Absence of the incumbent from the State of California for more than sixty (60) days, unless either upon business of the City or with the consent of the Council. In the case of illness or other urgent necessity, and upon a proper showing thereof, the time limited for absence from the State shall be extended by the Council;
- (g) The incumbent ceases to discharge the duties of his or her office for a period of three (3) consecutive months except when prevented by sickness or when absent from the State with permission required by this Charter;
- (h) The incumbent being convicted of a felony or of any offense involving a violation of his or her official duties;
- (i) The refusal or neglect of the incumbent to file his or her official oath or bond, if such is required by law, within the time prescribed by law;
- (j) The decision of a competent tribunal declaring void the incumbent's election or appointment;
- (k) The making of an order vacating the incumbent's office or declaring his or her office vacant when he or she fails to furnish an additional or supplemental bond if such is required of him or her by law;
- (l) The commitment of the incumbent to a hospital or sanitarium, by a court of competent jurisdiction, as a drug addict, dipsomaniac, inebriate, or stimulant addict; but in such event the office shall not be deemed vacant until the order of commitment has become final;
- (m) The incumbent's absence from five (5) consecutive regular meetings of the Council, unless excused by written resolution of the Council. No such excuse shall operate retroactively. No resolution shall excuse an incumbent's absence from more than five (5) consecutive regular meetings immediately following the date of adoption of such resolution although additional resolutions may be adopted excusing an incumbent's absence from not more than five (5) additional regular meetings immediately following the date of each such resolution. For purposes of this subsection, regular meetings from which an incumbent has been absent shall not be deemed consecutive if separated by one or more regular meetings at which such incumbent has been present or his or her absence from which has been excused by the Council. Also, for purposes of this subsection,

"regular meetings" shall not be deemed to mean or include "regular adjourned meetings", "special meetings", or any committee meetings.

*Amended at election June 2, 1970*

*Amended at election June 7, 1994*

#### **SECTION 410. Filling of Vacancies.**

If, for any reason, a vacancy, as defined by Charter Section 409, occurs in the office of Mayor or Council member, the Council shall either fill the vacancy by appointment by a majority of its remaining members, or call an election for the purpose of filling such vacancy.

- (a) **APPOINTMENT.** If the vacancy is filled by appointment, the appointment shall be effective until the end of the unexpired term of office or January 1st following the next Regular Municipal Election after the appointment, whichever first occurs.
- (b) **ELECTION.** If the vacancy is to be filled by election, the election will be for the entire unexpired term of the office. The election will either be conducted at a Regular Municipal Election, a General Election or at a Special Municipal Election, as determined by the Council. The election will be conducted in accordance with Section 1600.
- (c) **INTERIM APPOINTMENT.** If a vacant office is to be filled by election, the Council may make an interim appointment to fill the office until a candidate has been duly elected and the results of the election have been officially certified. A person who is appointed during the interim period shall meet the eligibility requirements to hold office under Section 404 of this Charter.
- (d) **ADVANCE REPLACEMENT.** When a vacancy is, for any reason, anticipated in advance of its actual occurrence, the Council may initiate the appointment or election process in anticipation of the vacancy. The member who will be vacating the position may participate in the process.
- (e) **NO REMAINING MEMBERS.** If the offices of all of the Council members and also of the Mayor should become vacant and no member of the Council remains to fill any vacancies, the City Clerk shall call and conduct a Special Municipal Election, as soon as reasonably possible, to fill such offices for the remainder of the unexpired terms.
- (f) **ELECTION DATES.** All dates for elections to fill vacancies shall be set by resolution.
- (g) **ELECTION IN 1994.** The election held on November 8, 1994 to fill a vacancy effective January 1, 1995 in Council District 7 shall be deemed to be an election

pursuant to this Section. The person so elected shall serve for the full term of that office.

*Amended at election June 6, 1967*

*Amended at election June 6, 1972*

*Amended at election November 7, 1978*

*Amended at election November 8, 1994*

#### **SECTION 411. The Council; Interference With Administrative Matters.**

Neither the Council nor any of its members nor the Mayor shall interfere with the execution by the City Manager of his or her powers and duties, nor in any manner dictate the appointment or removal of any City officers or employees whom the City Manager is empowered to appoint except as expressly provided in Section 411.1. However, the Council may express its views and fully and freely discuss with the City Manager anything pertaining to the appointment and removal of such officers and employees.

Except for the purpose of inquiries and investigations under Section 416, the Council, its members and the Mayor shall deal with City officers and employees who are subject to the direction and supervision of the City Manager, City Attorney, City Auditor, Independent Police Auditor or City Clerk, solely through the City Manager, City Attorney, City Auditor, Independent Police Auditor or City Clerk, respectively, and neither the Council nor its members nor the Mayor shall give orders to any subordinate officer or employee, either publicly or privately.

*Amended at election November 4, 1986*

*Amended at election November 3, 1992*

*Amended at election November 5, 1996*

#### **SECTION 411.1 Department Heads; Policy Objectives; Consent to Hire.**

- (a) The Council shall adopt a written Statement of Policy for each City Department which is under the administration of the City Manager. Said Statement of Policy shall set forth the broad goals, objectives and aspirations to be accomplished by that Department.
- (b) When the position of head of each Department becomes vacant, the Council shall review and, if necessary, amend the previously approved Statement of Policy. The Council also shall adopt a set of questions which are intended to elicit responses from each prospective appointee concerning the goals, objectives and aspirations in the Statement of Policy.

For purposes of this section, the term "department" shall mean any department specified in Charter Section 807 as well as any department created by ordinance pursuant to Charter Section 800.

Prior to appointing any Department head, the City Manager shall submit to the Council, for its review, the responses to the Council's questions submitted by the proposed appointee, and

shall seek the Council's advice and consent. The appointment shall be made only if the Council, by the affirmative vote of a majority of its members, advises the City Manager that it concurs with the proposed appointment. This section shall not apply to the appointment of any "acting" department head to serve in an interim capacity.

*Added at election November 4, 1986*

#### **SECTION 412. Meetings of the Council.**

The Council shall provide, by ordinance or resolution, not inconsistent with other provisions of this Section, for the time, place, and manner of holding its meetings. Copies of such ordinances or resolutions shall be kept on file in the office of the City Clerk where they shall be available for public inspection. To the extent that they are not inconsistent with other sections of this Charter, the provisions of Chapter 9 of Part I of Division 2 of Title 5 of the Government Code, as they now exist or may hereafter be amended, insofar as they relate to the right of the public to attend meetings of the Council, the adjournment of regular or adjourned regular meetings, the calling of special meetings and the holding of executive sessions, shall govern meetings of the Council. No business shall be considered at any special meeting other than such as is specified in the notice of such meeting.

#### **SECTION 413. Citizen Participation.**

Within the established rules for the conduct of its official proceedings, no person shall be denied the right personally, or through authorized representatives, to present grievances or offer suggestions for the betterment of municipal affairs at any regular meeting of the Council.

#### **SECTION 414. Quorum.**

Except as otherwise specifically provided elsewhere in this Charter, a majority of the entire membership of the Council shall be necessary to constitute a quorum to do business, but a lesser number may adjourn from time to time.

#### **SECTION 415. Rules and Procedure.**

The Council shall establish rules for the conduct of its proceedings, and to preserve order at its meetings. It shall cause a record of its meetings to be maintained and this record shall be open to public inspection.

#### **SECTION 416. Investigations.**

The Council may make investigations into the affairs of the City and the conduct of any City department, office, or agency, and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. Disobedience of any subpoena or the refusal to testify upon other than constitutional grounds shall be punishable by contempt proceedings.



## ARTICLE V THE MAYOR

### SECTION 500. Mayor.

There shall be a Mayor of the City of San José, elected at large, who shall be the eleventh member of the Council. Except as otherwise provided elsewhere in the Charter, the Mayor shall be elected by a majority of the votes cast citywide at a Regular Municipal Election, for a term of four (4) years from and after the first day of January following the year of the election.

The office of each member of the Council, including the office of the member who is Mayor, is a separate office to be separately filled. Any incumbent member of the Council may run for the seat of Mayor, and the Mayor may run for the seat of Mayor or for any other seat on the Council for which the Mayor is otherwise eligible; however, no member of the Council shall hold more than one seat, and no person may be a candidate for more than one seat.

*Amended at election November 7, 1978*

*Amended at election November 8, 1994*

### SECTION 501. Political Position.

It is the intent of this Article that the Mayor shall be the political leader within the community by providing guidance and leadership to the Council, by expressing and explaining to the community the City's policies and programs and by assisting the Council in the informed, vigorous and effective exercise of its powers. Political leadership shall be concerned with the general development of the community and the general level of City services and activity programs.

### SECTION 502. The Mayor; Powers and Duties.

The Mayor shall have the following powers and duties:

- (a) The Mayor shall have the power to make recommendations to the Council on matters of policy and program which require Council decision.
- (b) Not less than annually, the Mayor shall address the citizens of the City concerning the current status of City affairs and articulating the policy plans which the Mayor proposes for the City during the ensuing year.
- (c) In addition, the Mayor, at other times during the year, may inform the citizens concerning any matters of policy or program which the Mayor believes are for the welfare of the community.
- (d) If the Mayor recommends any increases in the City budget, the Mayor shall recommend the method of financing such expenditures. If the Mayor proposes

the curtailment of any service, the Mayor shall provide specific recommendations and the reasons for the proposal.

- (e) The Mayor shall preside at meetings of the Council and shall have a vote as a member of the Council. The Mayor shall have no veto powers;
- (f) The Mayor shall have authority to preserve order at all Council meetings, to remove or cause the removal of any person from any meeting of the Council for disorderly conduct, to enforce the rules of the Council and to determine the order of business under the rules of the Council;
- (g) The Mayor shall have the power to direct and supervise the Public Information Office of the City.
- (h) The Mayor shall exercise such other powers and perform such other duties as may be prescribed by the Council, provided the same are not inconsistent with this Charter.

Nothing in this Section shall be construed in any way as an infringement or limitation on the powers and duties of the City Manager as Chief Administrative Officer and head of the administrative branch of the City government as prescribed in other sections of this Charter. Except as otherwise provided in this Charter, the Mayor shall possess only such authority over the City Manager and the administrative branch as he or she possesses as one member of the Council.

*Amended at election November 4, 1986*

### **SECTION 503. Vice-Mayor.**

At the second meeting of the Council following the end of each even-numbered year within which a Regular Municipal Election is required to be held, the Council shall elect one of its members as Vice-Mayor who, until a person is appointed to succeed him or her, or until his or her office otherwise becomes vacant, shall serve as Vice-Mayor during the temporary absence or inability of the Mayor to discharge the duties of his or her office.

In case of the temporary absence or disability of both the Mayor and Vice-Mayor, the Council shall elect one of its members to act as Mayor Pro Tempore.

*Amended at election June 6, 1972*

*Amended at election June 7, 1994*

*Amended at election November 8, 1994*

### **SECTION 504. Vacancy.**

The office of Mayor shall become and be deemed vacant immediately upon the incumbent's ceasing to be a member of the Council.

## **ARTICLE VI LEGISLATION**

### **SECTION 600. Council Action; Method.**

The Council shall act only by ordinance, by resolution or by motion made, seconded and adopted. The vote on all ordinances, resolutions and motions shall be by "ayes" and "noes." The individual vote of each member of the Council shall be entered in the minutes of the Council, except that where a vote is unanimous, it may be so recorded. Upon request of any member, a roll-call vote shall be taken and recorded on any vote. Whenever a roll-call vote of the Council is in order, the City Clerk shall call the names of members in alphabetical order except that the name of the presiding officer shall be called last. All members present shall be required to vote unless disqualified from doing so by law. All written ordinances and resolutions shall be signed by the Mayor and attested by the City Clerk.

### **SECTION 601. Council Action, Vote Required.**

Except as otherwise provided elsewhere in this Charter, no ordinance, resolution or motion shall be passed, adopted, or become effective unless it receives the affirmative vote of at least either (a) four (4) members of the Council, if the vote is taken on or before December 31, 1980; or (b) six (6) members of the Council, if the vote is taken on or after January 1, 1981.  
*Amended at election November 7, 1978*

### **SECTION 602. Ordinances, When Required.**

The following acts of the Council shall be by ordinance:

- (a) Those acts required by specific provision of this Charter to be by ordinance;
- (b) Each act the violation of which will constitute a misdemeanor punishable by a fine or other penalty;
- (c) Each act imposing a new or additional tax, other than the annual property tax;
- (d) Each act granting a franchise.

### **SECTION 603. Ordinances, Requisites of.**

Every proposed ordinance shall be introduced in writing. The enacting clause shall be "Be it Ordained by the Council of the City of San José". Each ordinance shall contain a title which shall state in general terms the subject or subjects contained in the ordinance. No section of any ordinance or of any code shall be amended unless the whole section to be amended is set forth as amended.

#### **SECTION 604. Ordinances, Procedure for Adoption.**

Except as otherwise provided elsewhere in this Charter, and with the exception of ordinances which take effect immediately upon adoption, hereinafter referred to in this Article, no ordinance shall be adopted unless (a) it is first passed for publication of title, (b) the title of the ordinance is published as hereinafter provided in this Section, and (c) at least six (6) days have elapsed between the date it was passed for publication of title and the date it is adopted.

The title of an ordinance shall be deemed to have been "published", as said term is hereinabove used in this Section if such title is printed in a newspaper of general circulation in the City no later than the third day immediately preceding the date of its adoption. No part of any ordinance, or proposed ordinance, other than its title, need be published.

Ordinances which take effect immediately upon adoption, hereinafter referred to in this Article, may be adopted without compliance with the above provisions of this Section.

*Amended at election June 2, 1970*

#### **SECTION 605. Ordinances; Effective Date.**

Except as otherwise provided in this Charter, each adopted ordinance shall become effective at the expiration of thirty (30) days after adoption or at any later date specified therein.

The following ordinances shall take effect immediately upon adoption:

- (a) An ordinance calling for or otherwise relating to an election;
- (b) An ordinance declaring the amount of money necessary to be raised by taxation, or fixing a rate of ad valorem taxation or levying the annual tax on property;
- (c) An ordinance providing for a tax levy or appropriation for the usual current expenses of the City;
- (d) An ordinance adopted as and declared by the Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety, containing a statement of the facts constituting such urgency, if adopted by the affirmative vote of at least five (5) members of the Council if the vote occurs on or before December 31, 1980 or by not less than eight (8) members of the Council if the vote occurs on or after January 1, 1981;
- (e) An ordinance relating to a bond issue;
- (f) An ordinance adopted pursuant to a State law by virtue of which such ordinance shall be effective immediately.

Nothing contained in this Section shall be deemed to require an ordinance when an ordinance is not otherwise required.

*Amended at election November 7, 1978*

#### **SECTION 606. Codification.**

To the extent that it has not already so done, the Council shall cause to be codified all general ordinances in force, and cause the same to be printed in book, pamphlet or looseleaf form for the use of the City, its officers and the public.

#### **SECTION 607. Code of Ethics.**

The Mayor and City Council shall adopt and maintain a Code of Ethics to provide guidance to City officers and employees in their conduct while discharging their public responsibilities. This Code of Ethics shall include, but not be limited to, ordinances relating to the following areas of regulation:

- (a) Limitations on and requirements for reporting of campaign contributions and post-election contributions to candidates for elected City Offices.
- (b) Reporting and registration requirements for local government lobbyists who act to influence any governmental action of the City of San José.
- (c) Limitations on the acceptance of gifts by City officers and employees including elected officers and members of Boards and Commissions.
- (d) Limitations on the acceptance of honoraria by City officers including elected officials, Council appointees and members of Boards and Commissions.
- (e) Regulations regarding disqualification of former City officers and employees in matters connected with former City duties or official responsibilities.

The Mayor, on a biennial basis beginning in 1993, shall conduct a review of the City's Code of Ethics including any ordinances relating to ethic standards. The Mayor shall make any recommendation for amendments or changes to the Code of Ethics and its implementing ordinances to the City Council.

No amendments or changes shall be adopted which in any way lessen the ethical standard in regulations except by a two-thirds vote of the City Council.

*Added at election November 6, 1990*

#### **SECTION 608.**

*Repealed at election June 2, 1970*

## **SECTION 609. Violation and Penalty.**

The Council may make the violation of its ordinances a misdemeanor for which a violator may be prosecuted in the name of the People of the State of California and may prescribe punishment for each violation by a fine in an amount not to exceed that set by State law or by imprisonment not to exceed six (6) months, or by both fine and imprisonment. Such violations may also be redressed by civil actions.

*Amended at election November 6, 1984*

## **ARTICLE VII CITY MANAGER**

### **SECTION 700. Appointment, Term and Compensation.**

There shall be a City Manager. The Mayor shall nominate one or more candidates for Council consideration for appointment to the position of City Manager. The City Manager shall be appointed by the Council for an indefinite term. The Council shall fix the compensation of the City Manager.

*Amended at election November 4, 1986*

### **SECTION 701. City Manager; Powers and Duties.**

The City Manager shall be the chief administrative officer of the City. He or she shall be responsible to the Council for the administration of City affairs placed in his or her charge by or under this Charter. Without limiting the foregoing general grant of powers, responsibilities and duties, the City Manager shall have the following powers and duties:

- (a) Subject to the Civil Service provisions of this Charter and of any Civil Service Rules adopted pursuant thereto, and except as otherwise provided elsewhere in this Charter, the City Manager shall appoint all officers and employees of the City; and, when he or she deems it necessary for the good of the service, the City Manager may, subject to the above-mentioned limitations, suspend without pay, demote, discharge, remove or discipline any City officer or employee who under this Charter is appointed by the City Manager;
- (b) Except as otherwise provided elsewhere by this Charter, the City Manager shall direct and supervise the administration of all departments, offices and agencies of the City;
- (c) The City Manager shall have the right to attend all meetings of the Council, other than closed executive sessions where the City Manager or another Council appointee is the subject of discussion, and to take part in its discussions, but not to vote. The City Manager shall attend all regular and special meetings of the Council unless prevented by illness or physical incapacity or unless his or her absence has been authorized by the Council;

- (d) The City Manager shall be responsible for the faithful execution of all laws, provisions of this Charter, and acts of the Council which are subject to enforcement by the City Manager or by officers who are under the City Manager's direction and supervision;
- (e) The City Manager shall prepare and submit the annual budget to the Council in accordance with the provisions of Section 1204.
- (f) The City Manager shall submit a complete report on the finances and administrative activities of the City as of the end of the preceding fiscal year to the Council at a public meeting to be held within three (3) calendar months following the close of each preceding fiscal year. The annual report, which shall be personally certified by the City Manager to be accurate and complete shall contain a statement indicating:
  - (1) Whether the revenues budgeted for the preceding fiscal year were actually received, and an explanation concerning any material differences between the total revenues budgeted and the revenues actually received;
  - (2) The extent to which expenditures budgeted actually were incurred, and an explanation for any material variance between budgeted expenditures and actual expenditures;
  - (3) The amount of the financial reserves of the city;
  - (4) All other information which, in the opinion of the City Manager, is necessary to provide an accurate and complete picture of the fiscal status and condition of the city.

The report shall be in a form which is susceptible to confirmation by audit. It shall be made available to the public in the Office of the City Clerk.

- (g) The City Manager shall make such other reports as the Council from time to time may request concerning the operations of City departments, offices and agencies subject to his or her direction and supervision; shall keep the Council fully advised as to the financial condition and future needs of the City; and make such recommendations to the Council concerning the affairs of the City as he or she deems desirable or as requested by Council.
- (h) The City Manager shall exercise such other powers, and shall perform such other duties, as are specified in this Charter or may be authorized or required by the Council.

*Amended at election November 4, 1986*

## **SECTION 702. Removal by Council.**

The Council may remove the City Manager from office at any time.

## **SECTION 703. Removal by People.**

The City Manager may be removed from office by the People of the City pursuant and subject to the provisions of Section 1604 of this Charter.

## **SECTION 704. Acting City Manager.**

The City Manager may appoint, subject to approval of the Council, or if he or she fails to do so the Council may appoint, an officer of the City as Acting City Manager to exercise and perform the powers and duties of the City Manager during the temporary absence or disability of the City Manager.

*Amended at election June 7, 1994*

# **ARTICLE VIII ADMINISTRATIVE ORGANIZATION**

## **SECTION 800. Administrative Organization; General Provisions.**

Subject to the limitations hereinafter specified in this section, the Council shall have the following powers and duties:

- (a) The Council, in its discretion, may at any time establish such City offices, departments and agencies, in addition to those established by this Charter, as it may desire; and shall prescribe the respective functions, powers and duties of such additional offices, departments and agencies. The Council shall also prescribe the respective functions, powers and duties of those departments which are established by Section 807 of this Charter. The Council may at any time add to, take away, reduce or otherwise change the respective functions, powers and duties of any of the above mentioned offices, departments and agencies. The Council may at any time abolish or discontinue any office, department or agency other than those established by this Charter. The Council may also, at any time, prescribe additional functions, powers or duties for those offices and departments specified in Sections 803 to 807, inclusive, and may at any time take away, reduce or otherwise change all or any of such additional functions, powers or duties;
- (b) Subject to the limitations hereinafter specified in subsection (c) of this Section, the Council may:
  - (1) Contract with any "public agency" for the exercise or performance by a "public agency" for or on behalf of the City, of any of the powers, duties



or functions of any office, department or agency of the City established by or pursuant to the provisions of this article;

- (2) Contract with any "public agency" for the exercise or performance by the City, for or on behalf of any "public agency" of any of the powers, duties or functions of any "public agency";
- (3) Contract with any "public agency" for the joint exercise or performance by such "public agency" and the City, for or on behalf of any "public agency" and/or the City, of any of the powers, duties or functions of any office, department or agency of the City established by or pursuant to the provisions of this article and/or of any of the powers, duties or functions of any "public agency";
- (4) Contract with any "private agency" for the exercise or performance by a "private agency" or jointly by a "private agency" and the City for or on behalf of the City, of any of the powers, duties or functions of any office, department or agency established by or pursuant to the provisions of this article;
- (5) Contract with any "public agency" for the purchase or acquisition by a "public agency" by the City, or jointly by both, for or on behalf of the City, a "public agency" or both, of any real or personal property, or for the construction or making by a "public agency," by the City, or jointly by both, for or on behalf of the City, a "public agency" or both, of any public works project or public improvement.

Each such contract, excepting contracts for specific improvements or projects, and also excepting contracts for specific studies or reports to be completed within five years, shall be terminable by the City at any time following the expiration of one (1) year from and after the date of such contract or at any time following the expiration of such shorter period of time as may be specified in the contract.

In case of and during the term of any such contract, any provisions of this Charter, or of any ordinance, resolution or other City regulation, providing for the exercise or performance of said powers, duties or functions by a City office, department or agency established by or pursuant to the provisions of this article, or specifying a procedure for or otherwise controlling or regulating the manner in which such powers, duties or functions may be exercised or performed by any City office, department or agency established by or pursuant to this article, shall be deemed suspended to the extent that they are inconsistent with the performance or exercise by a "public agency" or "private agency" of any of such powers, duties or functions pursuant to or as provided by such contract. Also, the provisions of Section 1217 of this Charter, and of any City ordinance, resolution or other regulation relating to the matters mentioned in said Section

1217, shall not apply to any acquisitions or purchases of property, nor to any public works projects or improvements, made, constructed or done by a "public agency" for or on behalf of the City pursuant to any contract above mentioned in sub-paragraph (5) of this sub-section (b), provided that the "public agency," in doing such things for or on behalf of the City, complies with such procedural requirements as would be applicable to it if it were to do such things for or on behalf of itself.

As used in this sub-paragraph (b), "public agency" means the United States of America, the State of California, any division, department, office, agency or political or administrative subdivision of the United States or of the State of California, or any county, municipal corporation (other than the City of San José), district, authority or other governmental body or organization; and, as used in this sub-section (b), "private agency" means any private corporation, firm, association, organization or person.

- (c) Anything hereinabove in this section to the contrary notwithstanding, unless authorized by other sections of this Charter, no power, duty or function assigned by this Charter to the office of City Clerk, City Attorney, City Auditor, Independent Police Auditor or to the Finance Department, shall be discontinued or assigned or transferred to any other office, department or agency of the City nor to any "public agency" or "private agency" as said terms are hereinabove defined; excepting, however, that the Council may provide for the furnishing or performance of special services by another office, department or agency or by a "public agency" or a "private agency" to assist the office of City Clerk, City Attorney, City Auditor, Independent Police Auditor or the Department of Finance in the exercise or performance by them of those powers, duties and functions which are assigned to them by this Charter if and when such assistance or service is requested or recommended by the head of such office or department.

*Amended at election June 7, 1966*

*Amended at election November 4, 1986*

*Amended at election November 3, 1992*

*Amended at election November 5, 1996*

#### **SECTION 801. Direction by City Manager.**

Except as otherwise provided elsewhere in this Charter, all offices, departments and agencies established by or pursuant to the provisions of this Article shall be administered by an officer appointed by and subject to the direction and supervision of the City Manager.

#### **SECTION 802. Organization, Conduct and Operation of Departments.**

By action not inconsistent with other provisions of this Charter, the Council shall provide for the organization, conduct and operation of the several offices, departments and agencies of the City.

### **SECTION 803. Office of City Attorney.**

The office of City Attorney is hereby established. The City Attorney shall be an attorney at law, and shall be licensed to practice law in the State of California. In addition, he or she shall have had at least five (5) years of experience in the practice of law prior to his or her appointment. Except as otherwise provided in this Charter, the City Attorney shall have the following powers and duties:

- (a) Represent and appear for the City, its Council, boards and commissions, in any or all legal actions or proceedings in which they or any of them are concerned or are a part;
- (b) Upon request of an officer or employee or former officer or employee of the City, defend such officer or employee or former officer or employee in any action or proceeding brought against him or her, in his or her official or individual capacity or both, on account of an act or omission in the scope of his or her employment as an officer or employee of the City, whenever the City is required by the general laws of the State of California to provide such defense or whenever the Council elects to provide such defense even though not required to do so; provided and excepting, however, that the City Attorney may refuse to provide such defense whenever, in his or her opinion, his or her providing such defense would conflict with his or her other duties or responsibilities, in which event the City, if required by the general laws of the State to provide such defense or if it elects to provide such defense though not required by the general laws to do so, shall provide other legal counsel for such purpose;
- (c) Advise the Council and all City boards, commissions and officers in all matters of law pertaining to their offices or their powers and duties;
- (d) Perform other legal services required by the Council.

The Council may retain or employ, by contract or otherwise, other attorneys to take charge of any litigation or legal matter or to assist the City Attorney therein, or may purchase insurance which requires the insurer to provide for the defense of the City and/or of its officers and employees in connection with any matter covered by such insurance.

Except as may be otherwise provided by the Council, the City Attorney shall be under the direction and supervision of the Council.

*Amended at election June 7, 1994*

#### **SECTION 803.1 City Attorney; Power of Appointment.**

Subject to the Civil Service provisions of this Charter and of any Civil Service Rules adopted pursuant thereto, the City Attorney shall appoint all officers and employees, exclusive of

clerical, employed in the Office of the City Attorney, and when he or she deems it necessary for the good of the service, he or she may, subject to the above-mentioned limitations, suspend without pay, demote, discharge, remove or discipline any such officer or employee whom he or she is empowered to appoint. Neither the Council nor any of its members nor the Mayor shall in any manner dictate the appointment or removal of any such officer or employee whom the City Attorney is empowered to appoint, but the Council may express its views and fully and freely discuss with the City Attorney anything pertaining to the appointment and removal of such officers and employees.

*Added at election November 4, 1980*

*Amended at election June 7, 1994*

#### **SECTION 804. Office of City Clerk.**

The office of City Clerk is hereby established. The City Clerk shall have the following powers and duties:

- (a) Attend all regular and special meetings of the Council, unless prevented by illness or physical incapacity or unless his or her absence has been authorized by the Council; and keep an accurate record of the proceedings of the Council;
- (b) Keep a record of all ordinances of the City, and of all written resolutions adopted by the Council, in such manner that the information contained therein will be readily accessible to the public. To each ordinance contained in such record he or she shall annex or attach his or her certificate stating (1) that it is the original copy of such ordinance or, if the ordinance contained in his or her record is not the original copy, that it is a true and correct copy of the ordinance, and (2) if the ordinance was one required by law to be published, that it has been published pursuant to law;
- (c) Keep all other records of Council proceedings and of his or her office in such manner that the information contained therein will be readily accessible to the public until such time as any of them are destroyed in accordance with State law;
- (d) Be custodian of the seal of the City;
- (e) Administer oaths or affirmations and take affidavits and depositions in connection with or pertaining to City affairs or business; and certify copies of official records of his or her office;
- (f) Have charge of all City elections;
- (g) Be responsible for the publication of all official advertising of the City; and
- (h) Perform such other duties consistent with this Charter as may be required of him or her by the Council.

Except as may be otherwise provided by the Council, the City Clerk shall be under the direction and supervision of the Council.

*Amended at election June 7, 1994*

#### **SECTION 805. Office of the City Auditor.**

The office of City Auditor is hereby established. The City Auditor shall be appointed by the Council. Each such appointment shall be made as soon as such can reasonably be done after the expiration of the latest incumbent's term of office. Each such appointment shall be for a term ending four (4) years from and after the date of expiration of the immediately preceding term; provided, that if a vacancy should occur in such office before the expiration of the former incumbent's term, the Council shall appoint a successor to serve only for the remainder of said former incumbent's term.

The office of City Auditor shall become vacant upon the happening before the expiration of his term of any of the events set forth in subsections (a), (b), (c), (d), (e), (h), (i), (j), (k) and (l) of Section 409 of this Charter. The Council, by resolution adopted by not less than ten (10) of its members may remove an incumbent from the office of City Auditor, before the expiration of his or her term, for misconduct, inefficiency, incompetence, inability or failure to perform the duties of such office or negligence in the performance of such duties, provided it first states in writing the reasons for such removal and gives the incumbent an opportunity to be heard before the Council in his or her own defense; otherwise, the Council may not remove an incumbent from such office before the expiration of his or her term.

The City Auditor shall have the following powers and duties:

- (a) Conduct or cause to be conducted annual post audits of all the fiscal transactions and accounts kept by or for the City. Such audits shall include but not be limited to the examination and analysis of fiscal procedures and the examination, checking and verification of accounts and expenditures. The audits shall be conducted in accordance with generally accepted auditing standards and accordingly shall include tests of the accounting records and other auditing procedures as may be considered necessary under the circumstances. The audits shall include the issuance of suitable reports of examination so the Council and the public will be informed as to the adequacy of the financial statements of the City.
- (b) Conduct performance audits, as assigned by Council. A "performance audit" means a post audit which determines with regard to the purpose, functions and duties of the audited agency all of the following:
  - (1) Whether the audited department, office or agency, is managing or utilizing its resources, including public funds, personnel, property, equipment and space in an economical and efficient manner.

- (2) Causes of inefficiencies or uneconomical practices, including inadequacies in management information systems, internal and administrative procedures, organizational structure, use of resources, allocation of personnel, purchasing policies and equipment.
  - (3) Whether the desired results are being achieved.
  - (4) Whether objectives established by the Council or other authorizing body are being met.
- (c) Conduct special audits and investigations, as assigned by Council. "Special audits" and "investigations" mean assignments of limited scope, intended to determine:
- (1) The accuracy of information provided to the Council.
  - (2) The costs and consequences of recommendations made to the Council.
  - (3) Other information concerning the performance of City Departments, Offices or Agencies as requested by the Council.
- (d) The City Auditor shall have access to, and authority to examine any and all documents including but not limited to books, accounts, internal memoranda, writings and tapes, reports, vouchers, correspondence files and other records, bank accounts, money and other property of any City department, office or agency, whether created by the Charter or otherwise, with the exception of the office of any elected official.

It is the duty of any officer, employee or agent of the City having control of such records to permit access to, and examination thereof, upon the request of the City Auditor or his or her authorized representative. It is also the duty of any such officer, employee or agent to fully cooperate with, and to make full disclosure of all pertinent information.

- (e) Prepare and submit to the Council, in each calendar month, a written report of the City Auditor's activities and findings in the immediately preceding calendar month, together with any recommendations to improve the administration of the City;
- (f) Perform other auditing functions, consistent with other provisions of this Charter, and prepare and submit such other reports, as may be assigned by the Council.

*Amended at election November 7, 1978*

*Amended at election November 4, 1986*

## **SECTION 805.1 City Auditor; Power of Appointment.**

- (a) The City Auditor may appoint and prescribe the duties of the professional and technical employees employed in the Office of the City Auditor. Such appointed professional and technical employees shall serve in unclassified positions at the pleasure of the City Auditor. The Council shall determine whether a particular employee is a "professional" or "technical" employee who may be appointed by the City Auditor pursuant to these Subsections.
- (b) In addition, subject to the Civil Service provisions of this Charter and of any Civil Service Rules adopted pursuant thereto, the City Auditor shall appoint all clerical employees employed in the Office of the City Auditor, and when the City Auditor deems it necessary for the good of the service he or she may, subject to the above-mentioned limitations, suspend without pay, demote, discharge, remove or discipline any such employee whom he or she is empowered to appoint.
- (c) Neither the Council nor any of its members nor the Mayor shall in any manner dictate the appointment or removal of any such officer or employee whom the City Auditor is empowered to appoint, but the Council may express its views and fully and freely discuss with the City Auditor anything pertaining to the appointment and removal of such officers and employees.

*Added at election November 4, 1980.*

*Amended at election November 4, 1986*

## **SECTION 805.2 City Auditor Performance Audit.**

The Council shall contract with an independent audit firm, which has no other contracts with the City, to conduct a performance audit of the City Auditor's office at least every two years. The report of the performance audit shall be available to the public.

*Added at election November 4, 1986*

## **SECTION 806. Finance Department.**

A Finance Department is hereby established. A Director of Finance shall be the head of such department. The functions of such department and the powers and duties of the Director of Finance shall be as follows:

- (a) Regularly, at least once each month, and at the end of each fiscal year, prepare and submit to the City Manager a monthly statement indicating the financial condition of the City;
- (b) Except as otherwise provided in Article XII of this Charter, receive or collect all monies or revenues due the City; maintain custody of all public funds and securities belonging to or under the control of the City, and deposit and invest

funds in accordance with principles of sound treasury management and in accordance with the applicable laws or ordinances;

- (c) Maintain a general accounting system for the City; and supervise and control disbursements and expenditures to assure that unexhausted and unencumbered appropriations exist therefor or that payment has been otherwise legally authorized, and that money is available therefor in the City Treasury with which to make payment;
- (d) Verify cash receipts, the distribution of revenues to the appropriate funds, and certify as to the legality and correctness of all bills, invoices, payrolls, demands and charges against the City, and sign warrants or checks in payment of such claims;
- (e) Unless and except as may be otherwise provided by the Council, procure materials, supplies and general services for the City, and prepare and maintain a current inventory of all materials and supplies and an inventory of general assets belonging to the City;
- (f) Unless and except as may be otherwise provided by the Council, provide general services to other departments of the City as may be determined appropriate;
- (g) Perform such other functions, consistent with this Charter, as may be required by the Council.

Subject to the direction and supervision of the City Manager, the Director of Finance shall be responsible for the conduct of all of the functions of the Finance Department and, except as otherwise provided elsewhere in this Charter, shall have for such purpose the duties and powers imposed by the general laws of the State of California upon City Treasurers, City Assessors and City Tax Collectors.

#### **SECTION 807. Administrative Organization; Other Departments.**

- (a) The following Charter departments are hereby established: A Police Department, a Fire Department, a Public Works Department, a Parks and Recreation Department, a Personnel Department, a Planning Department, an Airport Department and a Library Department.
- (b) Additional departments may be created by Council from time to time pursuant to Section 800.
- (c) Each department shall have such functions, powers and duties as Council may from time to time prescribe.

*Amended at election November 4, 1986*



## **SECTION 808. Public Information Office.**

A Public Information Office is hereby established.

This office shall be administered by a Public Information Officer appointed by the Mayor. The Public Information Officer shall be under the direction and supervision of the Mayor.

The functions and duties of this office shall be to gather and disseminate to the public and to the news media, in a timely manner, accurate and complete information concerning the policies of the Council and other information regarding the City and the general region in which it is located, and to perform such other duties as may be assigned by the Council.

*Added at election November 4, 1986*

## **SECTION 809. Office of the Independent Police Auditor**

The Office of the Independent Police Auditor is hereby established. The Independent Police Auditor shall be appointed by the Council. Each such appointment shall be made as soon as such can reasonably be done after the expiration of the latest incumbent's term of office. Each such appointment shall be for a term ending four (4) years from and after the date of expiration of the immediately preceding term; provided, that if a vacancy should occur in such office before the expiration of the former incumbent's terms, the Council shall appoint a successor to serve only for the remainder of said former incumbent's term.

The office of Independent Police Auditor shall become vacant upon the happening before the expiration of his or her term of any of the events set forth in subsections (a), (b), (c), (d), (e), (h), (i), (j), (k) and (l) of Section 409 of this Charter. The Council, by resolution adopted by not less than ten (10) of its members may remove an incumbent from the office of the Independent Police Auditor, before the expiration of his or her term, for misconduct, inefficiency, incompetence, inability or failure to perform the duties of such office or negligence in the performance of such duties, provided it first states in writing the reasons for such removal and gives the incumbent an opportunity to be heard before the Council in his or her own defense; otherwise, the Council may not remove an incumbent from such office before the expiration of his or her term.

The Independent Police Auditor shall have the following powers and duties:

- (a) Review Police Department investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.
- (b) Make recommendations with regard to Police Department policies and procedures based on the Independent Police Auditor's review of investigations of complaints against police officers.

- (c) Conduct public outreach to educate the community on the role of the Independent Police Auditor and to assist the community with the process and procedures for investigation of complaints against police officers.

*Added at election November 5, 1996*

#### **SECTION 809.1. Independent Police Auditor; Power Of Appointment.**

- (a) The Independent Police Auditor may appoint and prescribe the duties of the professional and technical employees employed in the Office of the Independent Police Auditor. Such appointed professional and technical employees shall serve in unclassified positions at the pleasure of the Independent Police Auditor. The Council shall determine whether a particular employee is a "professional" or "technical" employee who may be appointed by the Independent Police Auditor pursuant to these Subsections.
- (b) In addition, subject to the Civil Service provisions of this Charter and of any Civil Service Rules adopted pursuant thereto, the Independent Police Auditor shall appoint all clerical employees employed in the Office of the Independent Police Auditor, and when the Independent Police Auditor deems it necessary for the good of the service he or she may, subject to the above-mentioned limitations, suspend without pay, demote, discharge, remove or discipline any such employee whom he or she is empowered to appoint.
- (c) Neither the Council nor any of its members nor the Mayor shall in any manner dictate the appointment or removal of any such officer or employee whom the Independent Police Auditor is empowered to appoint, but the Council may express its views and fully and freely discuss with the Independent Police Auditor anything pertaining to the appointment and removal of such officers and employees.

*Added at election November 5, 1996*

### **ARTICLE IX OFFICERS AND EMPLOYEES**

#### **SECTION 900. Officers and Employees; Enumeration.**

The officers of the City shall consist of the Mayor, members of the Council, the City Manager, the City Attorney, the City Clerk, the City Auditor, the Independent Police Auditor, the directors or heads of the various City offices or departments, the members of various boards and commissions and such other officers as may be provided for by this Charter or by action of the Council.

*Amended at election November 4, 1986*

*Amended at election November 3, 1992*

*Amended at election November 5, 1996*

## **SECTION 901. Officers and Employees; Appointment and Removal.**

The City Manager, the City Attorney, and the City Clerk shall be appointed and may at any time be removed by the Council. Except as otherwise provided by this Charter, all other officers, department heads and employees of the City, except members of boards and commissions, shall be appointed by the City Manager and, except as otherwise provided elsewhere in this Charter, shall serve at his or her pleasure.

The Council shall appoint, and may at any time remove, an Acting City Manager, an Acting City Attorney, Acting City Clerk, Acting City Auditor and Acting Independent Police Auditor to perform the functions and duties of the respective offices in the case of absence or disability.

The Mayor and each member of the Council shall appoint any assistants to serve in his or her office.

The City Manager shall, subject to the provisions of Section 411.1, appoint a person to act as the head of a department or office, other than the office of City Clerk, City Attorney, City Auditor, Independent Police Auditor and Public Information Officer in the case of absence or disability of the head of such department or office.

*Amended at election November 7, 1978*

*Amended at election November 4, 1986*

*Amended at election November 3, 1992*

*Amended at election November 5, 1996*

## **SECTION 902. Compensation.**

The compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council. All officers and employees shall be entitled to be reimbursed for actual and necessary expenses incurred while performing official business of the City when said expenses have been authorized or approved by the proper authority.

## **SECTION 903. Oath of Office.**

Each officer of the City, before entering upon the duties of his office, shall take the oath of office as provided for in the Constitution of this State and shall file the same with the City Clerk.

## **SECTION 904. Administering Oaths.**

Each department head and his or her deputies shall have the power to administer oaths and affirmations in connection with any official business pertaining to his or her department.

*Amended at election June 7, 1994*

#### **SECTION 905. Official Bonds.**

The Council shall fix the nature, amount and terms of the official bonds of all officials or employees who are required by the Council to qualify for such bonds; provided, however, that all officers and employees having custody or control of public funds shall be required to be bonded. All bonds shall be executed by a responsible corporate surety, shall be approved as to form by the City Attorney and shall be filed with the City Clerk. Premiums on official bonds shall be paid by the City.

#### **SECTION 906. Prohibited Interests.**

The provisions of Article 4, Chapter 1, Division 4, Title 1 of the Government Code of the State of California as the same now exist or may hereafter be amended, relating to prohibitions applicable to specified officers, shall apply in the City.

#### **SECTION 907. Nepotism.**

The Council shall not appoint to a salaried position under the City government any person who, at the time of his appointment, is related by blood or marriage, within the second degree, to any member of such Council; nor shall the City Manager or any other appointing authority appoint to any salaried position under City government any person who, at the time of his appointment, is related by blood or marriage, within the second degree, to such appointing authority.

#### **SECTION 908. Discrimination.**

Except as otherwise provided by the general laws of this State heretofore or hereafter enacted, no person employed by the City or seeking employment therewith shall be employed, refused employment, promoted, demoted, disciplined or discharged or in any way favored or discriminated against because of political opinion or affiliations, or membership in a lawful employees association, or because of race, color or creed.

### **ARTICLE X BOARDS AND COMMISSIONS**

#### **SECTION 1000. Planning Commission.**

There shall be, and there is hereby established, a Planning Commission to consist of seven (7) members appointed by the Council. It shall be deemed to be a continuation of the Planning Commission established by and pursuant to this Section as it read immediately prior to the effective date of this Section as it now reads.

A person shall not be eligible to take or hold office as a member of the Planning Commission unless he or she satisfies all of the following conditions:

- (a) He or she must have been a citizen of the United States for at least one year immediately preceding the commencement of the four-year term or lesser period of time for which he or she is appointed, and he or she must be a citizen of the United States during his or her incumbency;
- (b) He or she must have been a resident of the City of San José for at least one year immediately preceding the commencement of the four-year term or lesser period of time for which he or she is appointed, and he or she must be a resident of the City of San José during his or her incumbency;
- (c) He or she must have been a registered elector of the City of San José at the time of his or her appointment and thereafter to and including the date of commencement of the four-year term or lesser period of time for which he or she is appointed.

The City Manager, the City Attorney and such other officers as the Council may designate, or their representatives, may meet with the Planning Commission and may participate in its discussions but shall not have a vote.

Those persons who immediately prior to the effective date of this Section (as it now reads) were members of the Planning Commission established by and pursuant to this Section as it read immediately prior to the effective date of this Section (as it now reads) shall continue to be members of this Planning Commission and, subject to other provisions of this Charter, shall hold such offices until the expiration of the terms for which they were appointed, to wit: the three members appointed for terms expiring on June 30, 1970, shall continue in office until the end of June 30, 1970, and the four members appointed for terms expiring on June 30, 1972, shall continue in office until the end of June 30, 1972. Thereafter, the Council shall appoint commissioners for four-year terms commencing on the first day of July of each even-numbered year to fill the offices of those members whose terms expire as of the end of the 30th day of June of such year.

The office of a member shall become vacant if during his or her term of office he or she ceases to be a resident of the City of San José or ceases to be a citizen of the United States. Also, the office of a member shall become vacant upon the happening before the expiration of his or her term of any of the events set forth in subsections (a), (b), (c), (e), (g), (h), (i), (j), (k), and (l) of Section 409 of this Charter, or upon such member's absence from five (5) consecutive regular meetings other than adjourned regular meetings, of the Commission, unless excused by resolution of Council. Also, the Council may remove a member from office at any time for misconduct, inefficiency or willful neglect in the performance of the duties of his or her office providing it first states in writing the reasons for such removal and gives such member an opportunity to be heard before the Council in his or her own defense. If a vacancy occurs before the expiration of a member's term, the Council shall appoint a qualified person to fill such vacancy for the remainder of the unexpired term of such member.

The Planning Commission shall have the following powers and duties:

- (a) Make recommendations to the Council respecting the adoption, amendment, or repeal of master, general, comprehensive, precise or specific plans for future physical development of the City or any part thereof, and periodically review the same;
- (b) Make recommendations to the Council respecting the adoption, amendment or repeal of land use and development regulations, including but not limited to zoning and subdivision regulations;
- (c) Make recommendations to the Council respecting the adoption, amendment or repeal of plans or programs for the redevelopment, rehabilitation or renewal of any areas of the City;
- (d) Make recommendations to the Council respecting capital improvement programs; and
- (e) Exercise such other powers and perform such other functions and duties as may be expressly given to it by other provisions of this Charter, or exercise such other powers or perform such other functions as may be prescribed by the Council not inconsistent with the provisions of this Charter.

*Amended at election June 6, 1966*

*Amended at election June 2, 1970*

*Amended at election June 7, 1988*

*Amended at election June 7, 1994*

#### **SECTION 1001. Civil Service Commission.**

There shall be, and there is hereby established, a Civil Service Commission. The following provisions shall be applicable thereto:

- (a) **MEMBERSHIP.** The Civil Service Commission shall consist of five (5) members appointed by the Council for terms of four (4) years. Members must be qualified electors of the City at all times during their terms of office; not more than four (4) shall be of the same sex; and one (1) shall be an attorney-at-law, licensed to practice law in the State of California, who shall have practiced law in said State for at least five (5) years.
- (b) **TERMS OF OFFICE.** The term of office for persons appointed after November 1, 1998 shall be four (4) years.

The person who is appointed to fill the one (1) office of the member whose term expires on December 1, 2001, and each person who is thereafter appointed to fill such one (1) office whenever it becomes vacant, regardless of whether it becomes vacant during or at the end of an incumbent's term of office, shall be appointed by the Council from a list of three (3) persons to be nominated in

each case by all full-time officers and employees in the Civil Service of the City (other than members of the Council and members of boards and commissions) at elections to be held for such purpose. Only full-time officers and employees shall be eligible to vote at such elections, and no officer or employee shall be permitted to vote for more than one person at any one election. The names of three (3) persons receiving the highest number of votes at any such election shall be referred to the Council, and the Council, without consideration of the number of votes received by each, shall appoint to such office the one of the three whom it believes is best qualified for such office. Said nomination elections shall be conducted by the City Clerk in accordance with an election procedure prepared by the City Clerk and approved by the Council.

- (c) **VACANCIES.** The City Council shall adopt an ordinance setting forth rules relating to vacancies before expiration of a term of office and removal of a member from office.
- (d) **OATH AND DECLARATION.** The members of the Civil Service Commission, in addition to the oath of office required by law, shall make under oath and file in the office of the City Clerk the following declaration: "I am opposed to appointment to public service as a reward for political activity and will execute and perform the powers and duties of the office of Civil Service Commissioner in the spirit of this declaration."
- (e) **SECRETARY.** The Council shall provide the Commission with a secretary satisfactory to the Commission; provided, however, that the head of any personnel department of the City shall not hold any secretarial, executive or administrative position under the direct jurisdiction of the Civil Service Commission.
- (f) **POWERS AND DUTIES.** The Civil Service Commission shall have the following powers and duties:
  - (1) To recommend to the Council the adoption, amendment or repeal of Civil Service Rules relating to the matters specified in Section 1102 of Article XI of this Charter;
  - (2) To make any investigation which it may consider desirable concerning the administration of personnel in the Classified Service;
  - (3) To make recommendations to the Council, the City Manager or to any other appointive power on matters relating to the administration of personnel in the Classified Service;
  - (4) To exercise and perform such other powers and duties as are expressly given to it by other provisions of this Charter; and to exercise such other

powers and perform such other functions and duties as may be prescribed by the Council not inconsistent with the provisions of this Charter.

*Amended at election June 7, 1988*

*Amended at election June 7, 1994*

*Amended at election November 3, 1998*

#### **SECTION 1001.1 Council Salary Setting Commission.**

There shall be, and there is hereby established, a Council Salary Setting Commission. The following provisions shall be applicable thereto:

- (a) **MEMBERSHIP.** The Council Salary Setting Commission shall consist of five (5) members appointed by the Civil Service Commission. Members must be qualified electors of the City at all times during their term of office.
- (b) **TERMS OF OFFICE.** Except as provided hereinbelow, the regular term of office of each member of the Council Salary Setting Commission shall be four (4) years. The initial members of the Council Salary Setting Commission shall be appointed by the Civil Service Commission during the month of January, 1981. Two (2) of the members so appointed shall be appointed for a term expiring on December 31, 1982; and three (3) of the members so appointed shall be appointed for a term expiring on December 31, 1984. Commencing in December of 1982, the Civil Service Commission shall, during the month of December of each even-numbered year, make appointments to fill the offices of the members whose terms are expiring at the end of such even-numbered year. Such appointments shall be for regular terms of four (4) years commencing on the first day of January of the following odd-numbered year and expiring on the 31st day of December of the second even-numbered year thereafter.
- (c) **VACANCIES.** The office of a member shall become vacant upon the happening before the expiration of his or her term of any of the events set forth in subsections (a), (b), (c), (d), (e), (h), (i), (j), (k), and (l) of Section 409 of this Charter. Also, the Civil Service Commission may remove a member from office at any time for misconduct, inefficiency or willful neglect in the performance of the duties of his or her office providing it first states in writing the reasons for such removal and gives such member an opportunity to be heard before the Civil Service Commission in his or her own defense. If a vacancy occurs before the expiration of a member's term, the Civil Service Commission shall appoint a qualified person to fill such vacancy for the remainder of the unexpired term of such member.



- (d) **POWERS AND DUTIES.** The Council Salary Setting Commission shall biennially make recommendations respecting salaries for members of the Council, including the Mayor, as provided in Section 407 of this Charter.

*Added at election November 4, 1980*

*Amended at election June 7, 1994*

#### **SECTION 1002. Other Boards and Commissions.**

In addition to those specific boards and commissions which are established by other provisions of this Article, the Council may create such other boards and commissions as in its judgment are required, and may grant them such functions, powers and duties as are consistent with the provisions of this Charter. In addition, the Council may create such temporary committees as it may deem advisable to render counsel and advice to the Council, the City Manager or any board or commission on any specified matter within the jurisdiction of such authorities. All boards, commissions and committees created by the Council shall be subject to such direction and supervision, if any, as the Council may specify, and the members thereof shall be appointed by the Council, or by the Mayor if such is authorized by the Council, for such terms as the Council may deem advisable.

#### **SECTION 1003. Reimbursement for Expenses.**

Members of boards, commissions and committees shall receive reimbursement, if and to the extent such is authorized by the Council, for expenses incurred in the performance of their duties or functions of office.

### **ARTICLE XI CIVIL SERVICE SYSTEM**

#### **SECTION 1100. Merit Principle.**

All appointments and promotions to positions in the Classified Service shall be made on the basis of merit and fitness, demonstrated by examination and other evidence of competence, in accordance with Civil Service Rules adopted in the manner provided in this Charter.

#### **SECTION 1101. Civil Service System; Classified and Unclassified Service.**

The Civil Service of the City shall be divided into the Classified Service and the Unclassified Service, as follows:

- (a) The Unclassified Service shall comprise and include all of the following officers and employees:
  - (1) The Mayor and the members of the Council and their assistants;

- (2) All members of boards and commissions, and if so desired by the Civil Service Commission, the Secretary of the Civil Service Commission;
- (3) The City Manager and all his or her assistants, deputies, and secretaries, the head of each department, assistant directors of departments, deputy directors of departments, (excluding the police department) and the City Clerk and one assistant.
- (4) Temporary Employment
  - a. Persons temporarily employed to make or conduct a special inquiry, investigation, examination or installation, or to render professional, scientific or technical services of an occasional or exceptional character; provided that no person employed in the Unclassified Service pursuant to this subsection for any purpose shall continue in such employment pursuant to this subsection for a period in excess of six (6) months for each special inquiry, investigation, examination, installation or particular service unless an extension is approved by the Civil Service Commission;
  - b. Persons temporarily employed to fill positions for a period of time not to exceed two (2) years, where there exists a need to perform duties of a temporary nature or where duties may be required on an intermittent basis.
- (5) Persons employed in the event of an emergency to perform services required because of and during such emergency for a period of time not to exceed six (6) months unless an extension is approved by the Civil Service Commission;
- (6) Persons employed to temporarily fill positions in the classified service when no eligible lists of applicants for such positions exist, until such time as eligible lists are created and persons can be hired there from to fill such positions;
- (7) Volunteer members of the police, fire or civil defense departments or of any police, fire or civil defense force or organization.
- (8) The Public Information Officer, and all persons employed in the Public Information Office, exclusive of clerical employees.
- (9) The City Auditor and the professional and technical employees in the Office of the City Auditor.
- (10) The City Attorney and all attorneys and supervisors in the Office of the City Attorney;

- (11) The Independent Police Auditor and the professional and technical employees in the Office of the Independent Police Auditor.
- (b) The Classified Service shall consist of all persons employed in positions in the City Civil Service which are not in the Unclassified Service;
- (c) Nothing herein shall be construed as precluding the appointing authority from filling any position in the manner in which positions in the Classified Service are filled.
- (d) Whenever previously classified positions are placed in the unclassified service in this Charter, the unclassified status shall not apply to those incumbents filling those classified positions on the date that the conversion was approved by election.

*Amended at election November 4, 1986*

*Amended at election November 3, 1992*

*Amended at election June 7, 1994*

*Amended at election November 5, 1996*

#### **SECTION 1102. Civil Service Rules; Contents.**

The Council shall adopt Civil Service Rules for the Classified Service relating to the following matters: Creation of positions; applications for employment; examinations; eligibility and qualifications; duration of eligible lists; certification of eligible lists; appointments; promotions; demotions; transfers; resignations; layoffs; temporary reductions due to retrenchment or completion of work; performance ratings; factors and weights to be considered in efficiency rating; filling of positions; classification of positions; specifications for positions; separation from service; dismissals; suspensions; disciplinary action; such other things, consistent with this Charter, as the Council may deem proper and necessary.

#### **SECTION 1103. Civil Service Rules; Manner of Adoption.**

Civil Service Rules for the Classified Service shall be adopted, and may from time to time be repealed or amended, by ordinance of the Council. Upon adoption, Civil Service Rules shall have the force and effect of law.

The Council may adopt, repeal or amend any Civil Service Rule for the Classified Service, provided it first receives from the Civil Service Commission a report or recommendation with respect to the proposed new Rule, if a new Rule is proposed to be adopted, or with respect to the proposed repeal or amendment of an existing Rule if an existing Rule is proposed to be repealed or amended; provided, however, that if the Civil Service Commission refuses or fails to submit to the Council a report or recommendation on any proposed new Rule, or proposed repeal or amendment of any existing Rule, within ninety (90) days from and after the date the Council requests such a report or recommendation, the

Council may adopt such new Rule or repeal or amend such existing Rule, without first receiving a report or recommendation thereon from the Civil Service Commission.

#### **SECTION 1104. Disciplinary Action.**

*Repealed at election November 3, 1998*

#### **SECTION 1105. Appointments from Classified Service to Unclassified Service.**

In the event an officer or employee of the City who heretofore held or now holds a position in the Classified Service was thereafter or is hereafter appointed to a position in the Unclassified Service, and should subsequently be removed or resign from the Unclassified Service, he or she shall have the right, if he or she has not been guilty of infamous, disgraceful or dishonest conduct, to be employed forthwith in a position consonant with his or her former classification in the Classified Service without loss of any rights or privileges and upon the same terms and conditions as if he or she had remained in said classification.

*Amended at election June 7, 1994*

#### **SECTION 1106. Employees of Consolidated Cities.**

Except as otherwise required by such laws of the State of California as are applicable to charter cities, all officers and employees of any city (hereinafter called "consolidated city") hereafter consolidated with the City of San José, who were full-time officers or employees of such consolidated city upon the date of election held in such consolidated city for such consolidation, when such officers or employees would be included in the classified service of the City of San José, shall from the effective date of such consolidation be deemed to have their names upon eligible lists for respective types of positions held by them, and to be qualified for appointment to such respective positions.

*Amended at election June 3, 1969*

#### **SECTION 1107. Employees of Annexed Agencies.**

In the event of the annexation of all or a portion of the area of any governmental agency to the City, it shall be discretionary with the Council as to whether all or any of the officers or employees of such agency shall be entitled to have their names placed upon eligible lists for respective types of positions held by them and to be qualified for appointment to such respective positions.

#### **SECTION 1108. Mandatory Separation from Service.**

Any member of the Police or Fire Department of the City who is also a member of any Police and Fire Department retirement plan or system of the City must be separated from any position in the Police or Fire Department of the City upon his or her attaining the age of seventy (70) years, such separation to be effective no later than the last day of the calendar month within which he or she attains such age. Subject to the provisions of other sections of this Charter, the Council may at any time provide for mandatory separation of officers or

employees, other than persons holding elective offices, from specified positions in the Civil Service at an earlier age if and when the Council deems such to be for the good of the Civil Service.

*Amended at election November 2, 1982*

*Amended at election June 5, 1984*

*Amended at election June 7, 1994*

#### **SECTION 1109. Exclusions and Exceptions.**

The provisions of this Article shall not be deemed to apply to, nor in any way limit the Council in, the Council's exercise of any of the powers granted to it by the provisions of subsection (b) of Section 800, or by the provisions of Section 803, of the Charter. All transfers or consolidations of functions, and all contracts, resulting from the exercise by the Council of such powers shall be deemed exempt from the Civil Service provisions of this Charter, and all persons employed or whose services are contracted for, pursuant to any such transfer, consolidation or contract shall be deemed, for Civil Service purposes, to be independent contractors and not officers or employees within the Civil Service of the City, regardless of the extent, if any, of any supervision or control which may be exercised over such persons or their activities by any officer or employee of the City. Also, the Council may at any time, or from time to time, authorize or direct the execution of contracts between the City and any public or private body, entity, firm, organization, association or person, for the conduct or making of any special study, inquiry, investigation or examination, or for the preparing or doing of any special or particular services or work, for or on behalf of the City or any office, department or agency thereof, unless such is prohibited by the provisions of any other Article of this Charter, without complying with the provisions of this Article; and all persons with whom such contracts are made shall be deemed, for Civil Service purposes, to be independent contractors and not officers or employees within the Civil Service of the City, regardless of the extent, if any, of any supervision or control which may be exercised over such persons or their activities by any officer or employee of the City. In addition, the appointment by the Council of any person to any office, pursuant to authority granted to the Council by this Charter, shall not be subject to the Civil Service provisions of this Charter.

#### **SECTION 1110. Exceptions: War or National Emergency.**

Notwithstanding any other provisions of this Charter to the contrary, in time of war or national emergency the Council may provide for the emergency employment of any person to fill any office or position in the City. Such person shall not be subject to the requirements, regulations and qualifications of the personnel, merit or civil service system adopted by the City. An emergency appointee shall not acquire civil service or other permanent status because of the emergency appointment. The Council may, however, provide that an emergency appointee selected from an eligible list who is otherwise eligible for permanent appointment may acquire such rights as are expressly provided for under Civil Service Rules.

**SECTION 1111. Compulsory Arbitration for Fire and Police Department Employee Disputes.**

- (a) It is hereby declared to be the policy of the City of San José that strikes by firefighting and peace officers are unlawful in the state of California and not in the public interest and should be prohibited, and that a method should be adopted for peacefully and equitably resolving disputes that might otherwise lead to such strikes.

If any firefighter or peace officer employed by the City of San José willfully engages in a strike against the City, said employee shall be dismissed from his or her employment and may not be reinstated or returned to City employment except as a new employee. No officer, board, council or commission shall have the power to grant amnesty to any employee charged with engaging in a strike against the City.

- (b) The City, through its duly authorized representatives, shall negotiate in good faith with the recognized fire and police department employee organizations on all matters relating to the wages, hours, and other terms and conditions of City employment, including the establishment of procedures for the resolution of grievances submitted by either employee organization over the interpretation or application of any negotiated agreement including a provision for binding arbitration of those grievances. Unless and until agreement is reached through negotiations between the City and the recognized employee organization for the fire or police department or a determination is made through the arbitration procedure hereinafter provided, no existing benefit or condition of employment for the members of the fire department or police department bargaining unit shall be eliminated or changed.
- (c) All disputes or controversies pertaining to wages, hours, or terms and conditions of employment which remain unresolved after good faith negotiations between the City and either the fire or police department employee organization shall be submitted to a three-member Board of Arbitrators upon the declaration of an impasse by the City or by the recognized employee organization involved in the dispute. All issues concerning the scope of the arbitration Board's authority, jurisdiction or powers shall, upon the request of either party, be resolved by petition to the Superior Court.
- (d) Representatives designated by the City and representatives of the recognized employee organization involved in the dispute, controversy or grievance shall each select one arbitrator to the Board of Arbitrators within three (3) days after either party has notified the other, in writing, that it desires to proceed to arbitration. The third member of the Arbitration Board shall be selected by agreement between the two arbitrators selected by the City and the employee organization, and shall serve as the neutral arbitrator and Chairman of the Board. In the event that the arbitrators selected by the City and the employee

organization cannot agree upon the selection of the third arbitrator within ten (10) days from the date that either party has notified the other that it has declared an impasse, then either party may request the Superior Court of the County of Santa Clara to appoint an arbitrator who shall be a retired judge of the Superior Court.

Any arbitration convened pursuant to this section shall be conducted in conformance with, subject to, and governed by Title 9 of Part 3 of the California Code of Civil Procedure to the extent that such procedures do not conflict with this Charter Section. Unless otherwise mandated by state or federal law, all arbitration hearings shall be open to the public and all documents submitted in arbitration shall be public records. Notwithstanding any other provision of this Charter to the contrary, the authority, jurisdiction and powers of the Board of Arbitrators are limited by the provisions of this Section.

- (e) At the conclusion of the arbitration hearings, the Arbitration Board shall direct each of the parties to submit, within such time limit as the Board may establish, a last offer of settlement on each of the issues in dispute. The Arbitration Board shall decide each issue by majority vote by selecting whichever last offer of settlement on that issue it finds by the preponderance of the evidence submitted to the Arbitration Board satisfies section (f) below, is in the best interest and promotes the welfare of the public, and most nearly conforms with those factors traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of public and private employment, including, but not limited to, changes in the average consumer price index for goods and services, the wages, hours, and other terms and conditions of employment of other employees performing similar services.
- (f) In all arbitration proceedings conducted pursuant to this section, the primary factors in decisions regarding compensation shall be the City's financial condition and, in addition, its ability to pay for employee compensation from on-going revenues without reducing City services. No arbitration award may be issued unless a majority of the Arbitration Board determines, based upon a fair and thorough review of the City's financial condition and a cost analysis of the parties' last offers, that the City can meet the cost of the award from on-going revenues without reducing City services. The arbitrators shall also consider and give substantial weight to the rate of increase or decrease of compensation approved by the City Council for other bargaining units.

"Compensation" shall mean all costs to the City, whether new or ongoing, for salary paid and benefits provided to employees, including but not limited to wages, special pay, premium pay, incentive pay, pension, retiree medical coverage, employee medical and dental coverage, other insurance provided by the City, vacation, holidays, and other paid time off.

(g) Additionally, the Board of Arbitrators shall not render a decision, or issue an award, that:

- (1) increases the projected cost of compensation for the bargaining units at a rate that exceeds the rate of increase in revenues from the sales tax, property tax, utility tax and telephone tax averaged over the prior five fiscal years; or
- (2) retroactively increases or decreases compensation, including, but not limited to, enhancements to pension and retiree health benefit for service already rendered, but excluding base wages; or
- (3) creates a new or additional unfunded liability for which the City would be obligated to pay; or
- (4) deprives or interferes with the discretion of the Police Chief or Fire Chief to make managerial, operational or staffing decisions, rules, orders and policies in the interest of the effective and efficient provision of police and fire services to the public.

(h) Compliance with the provisions of this Section shall be mandatory and enforceable pursuant to section 1085 of the Code of Civil Procedure; failure to comply with these provisions shall also constitute an act in excess of jurisdiction.

(i) After reaching a decision, the Arbitration Board shall mail or otherwise deliver a true copy of its decision to the parties. The decision of the Arbitration Board shall not be publicly disclosed and shall not be binding until ten (10) days after it is delivered to the parties. During that ten-day period the parties may meet privately, attempt to resolve their differences, and by mutual agreement amend or modify any of the decisions of the Arbitration Board. At the conclusion of the ten-day period, which may be extended by mutual agreement between the parties, the decision of the Arbitration Board together with any amendments or modifications agreed to by the parties shall be publicly disclosed and shall be binding upon the parties. The City and the recognized employee organization shall take whatever action is necessary to carry out and effectuate the award.

(j) The expenses of any arbitration convened pursuant to this section, including the fee for the services of the Chairman of the Arbitration Board, shall be borne equally by the parties. All other expenses which the parties may incur individually are to be borne by the party incurring such expenses.

(k) This Section shall be effective immediately upon passage by the voters, and shall apply to any arbitration in which hearings commence after November 2, 2010.



- (l) The voters declare that the provisions of this Section are not severable, and none would have been enacted without the others. Should any portion of this Section 1111 be enjoined or declared invalid, all provisions shall be deemed invalid and inoperative and there shall be no compulsory arbitration for fire and police department employee disputes.

*Added at election November 4, 1980*

*Amended at election November 2, 2010*

## **ARTICLE XII FISCAL ADMINISTRATION**

### **SECTION 1200. Fiscal Year.**

Unless otherwise provided by ordinance, the fiscal year of the City shall begin on the first day of July of each year and end on the 30th day of June of the following year.

### **SECTION 1201. Use of County Tax System.**

Unless otherwise provided by or pursuant to ordinance adopted or approved by the qualified electors of the City, the Council shall continue to use for the purpose of municipal ad valorem property taxation the Santa Clara County system of property assessment and property tax collection as said system is now provided by law or may hereafter be amended and insofar as such provision is not in conflict with this Charter.

Should there arise any reason whatsoever that prevents the City from using said County system for said purpose or if the use of the County system should be discontinued by or pursuant to ordinance adopted or approved by the qualified electors of the City, the Council shall provide a system for the assessment of property and the collection of property taxes in the City.

### **SECTION 1202. Submission of Capital Improvement Program; Contents.**

At least thirty (30) days prior to the beginning of each fiscal year, or at such earlier time as the Council may specify, the City Manager shall prepare and shall submit to the Council a capital improvement program for the five (5) fiscal years immediately following the fiscal year within which such program is submitted to Council. On or before the day that he or she submits such program to the Council, the City Manager shall also file a copy of the program with the Planning Commission of the City. Such capital program shall include:

- (a) A clear summary of its contents;
- (b) A list of all capital improvements which are proposed to be undertaken during the five fiscal years immediately following the fiscal year within which such program is submitted to the Council with appropriate supporting information as to the necessity of such improvements;

- (c) Cost estimates, method of financing and recommended time schedules for each such improvement; and

- (d) Such other information as the City Manager may deem desirable.

*Amended at election November 6, 1990*

*Amended at election June 7, 1994*

*Amended at election November 7, 2000*

### **SECTION 1203. Action on Capital Program.**

Upon receipt of the copy of the capital improvement program prepared by the City Manager, the Planning Commission shall consider the program and, at least ten (10) days prior to the time fixed by Council for a public hearing on the capital program, shall submit to the Council a written report setting forth its findings and recommendations respecting such program. The Planning Commission, in its report may recommend such additions, deletions or other amendments as it deems desirable. If it should recommend any capital improvements different from or additional to those proposed by the City Manager, it shall set forth, in its report, the estimated cost thereof and the manner in which it proposes that the same shall be financed.

The Council shall fix a time and place for a public hearing on the capital program as submitted by the City Manager and upon such amendments or changes, if any, as shall have been submitted as aforesaid by the Planning Commission at least ten (10) days prior to the time fixed by Council for a public hearing on the capital program. The Council shall cause a notice of such public hearing to be published not less than ten (10) days prior to said hearing by at least one insertion in a newspaper of general circulation in the City. Copies of the capital program as submitted by the City Manager, and copies of such report as may have been submitted by the Commission, shall be filed and available for inspection by the public in the office of the City Clerk for at least ten (10) days prior to said public hearing. The notice of such public hearing shall state the time and place of hearing and the times and place when and where copies of the capital program as submitted by the City Manager and the report of the Planning Commission will be available for inspection by the public. At the time and place so advertised or at any time or place to which such public hearing shall from time to time be adjourned, the Council shall hold a public hearing on the capital program as submitted by the City Manager, and on the written report of the Planning Commission, at which interested persons desiring to be heard shall be given reasonable opportunity to be heard.

Upon conclusion of such hearing, the Council shall adopt such a capital program, for the five (5) fiscal years covered by the City Manager's proposed capital program with such amendments as it may deem desirable. Upon its adoption and until adoption of a new budget and a new five (5) year capital program, such capital program, as adopted by the Council, shall serve as a general guide to the Council and to the City administration in the planning and scheduling of capital improvements. From time to time, however, the Council may authorize such departures therefrom as it may deem necessary or desirable.

*Amended at election November 6, 1990*

*Amended at election November 7, 2000*

**SECTION 1204. Fiscal Administration; Submission of Budget and Budget Message.**

- (a) Each Council Appointee shall submit to the Mayor and the Council annually the budget request, for the ensuing fiscal year, of each City department, office or agency under his or her administration.
- (b) The Mayor shall deliver a budget message which shall include:
  - A statement of the fiscal priorities which the City should adopt for the ensuing year.
  - Which Departments, Offices or Agencies the Mayor proposes to be expanded or to receive reduced budgeted allocations.
  - Specific recommendations concerning any proposed additions to or deletions from the budget.
- (c) The Mayor shall deliver the Mayor's budget message during a meeting of the Council to be held following the receipt of the budget request from the City Manager.
- (d) The Council shall hold a public hearing to consider the Mayor's budget message and to make any revisions or changes in it which the Council deems advisable.

The Council shall fix a time and place for the public hearing, and shall give notice in the manner specified in Section 1206.

Upon close of the public hearing, the Council shall approve the Mayor's budget message as presented, or as revised, by the affirmative vote of a majority of its members.

- (e) None of the recommendations included within the Mayor's budget message, or as amended and approved by the Council, shall be implemented or carried out in any manner which violates the requirement for a balanced budget contained in Section 1205.

- (f) At least thirty (30) days prior to the beginning of each fiscal year, or at such earlier time as the Council may specify, the City Manager shall submit to the Council a budget for the ensuing fiscal year, together with an accompanying report.

In addition to complying with the requirements of Section 1205, the budget shall contain the City Manager's financial plan for the activities of the City proposed for the ensuing fiscal year which reflects accurately the recommendations and priorities specified in the budget message as adopted by the Council.

The report of the City Manager accompanying the budget shall specify the budget allocations which implement each component included within the budget message as adopted by the Council.

*Amended at election November 4, 1986*

#### **SECTION 1205. Budget, Contents.**

The budget shall provide a complete financial plan of all City funds and activities for the ensuing fiscal year and, except as required by law or this Charter, shall be in such form as the Council may require or, in the absence of Council requirements, in such form as the City Manager deems desirable. It shall begin with a clear general summary of its contents; shall show in detail all estimated income, including the amount proposed to be raised by property taxation, estimated unencumbered balances of funds to be carried over from the preceding year, estimated unencumbered available reserves, and all proposed expenditures, including debt service, for the ensuing year. The total of proposed expenditures shall not exceed the total of estimated income, estimated unencumbered balances of funds to be carried over from the preceding year and unencumbered available reserves.

#### **SECTION 1206. Council Action on Budget.**

Upon receipt of the proposed budget from the City Manager, the Council shall proceed to consider the same and may make such revisions and changes as it may deem advisable; but it shall not adopt such budget, either as proposed by the Manager or as revised or changed by the Council, until after it shall have held a public hearing in accordance with the following provisions of this Section.

The Council shall fix a time and place for a public hearing on the budget, and shall cause a notice of such public hearing to be published not less than ten (10) days prior to said hearing by at least one insertion in a newspaper of general circulation within the City. Copies of the proposed budget as submitted by the City Manager shall be filed and available for inspection by the public in the office of the City Clerk for at least ten (10) days prior to said hearing. Statements, or copies, of such revisions or changes as the Council shall have made in the proposed budget prior to said public hearing shall be available for public inspection at the public hearing. The notice of said public hearing shall state the time and place of public

hearing and the times and place where copies of the budget as submitted by the City Manager will be available for public inspection, and shall further state that statements, or copies, of such revisions or changes as the Council shall have made in the proposed budget before the public hearing will be available for public inspection at the time and place of said public hearing.

At the time and place advertised for said public hearing or at any time or place to which said public hearing shall from time to time be adjourned, the Council shall hold a public hearing on the proposed budget, and upon such revisions or changes as may have been made by the Council, at which interested persons desiring to be heard shall be given reasonable opportunity to be heard. Upon conclusion of such public hearing, the Council may adopt the proposed budget with such amendments, if any, as it may deem desirable. Such amendments may add or increase programs or amounts or may delete or decrease any programs or amounts except expenditures required by law or for debt service, provided that no amendment to the budget shall increase proposed expenditures to an amount greater than the total estimated income plus unencumbered available reserves and estimated unencumbered balances of funds carried over from the preceding fiscal year.

#### **SECTION 1207. Appropriations.**

After adoption of the budget and on or prior to the beginning of the budget year, the Council, by ordinance, shall appropriate monies for the operation of each of the offices, departments and agencies of the City during the budget year and for other purposes or objects named in the budget. Appropriations may be made for various classes or categories of expenditures, if the Council deems such to be desirable, without separately appropriating specific amounts of money for each of the items of expenditure within any class or category. Each department, officer or agency to or for which an appropriation has thus been made shall be deemed authorized to use the money so appropriated, subject to the supervision and direction of the City Manager and subject to such other restrictions as are elsewhere set forth in this Charter or are imposed by the Council, for the classes or categories of expenditures specified in the appropriation ordinance, provided its expenditures are within the bounds of the appropriation. Appropriations for bond interest, bond redemption, fixed charges and other classes or categories of expenditures not appropriated to a specific department, office or agency shall be subject to the administration of and expenditure by the City Manager for the respective classes or categories of expenditures for which such appropriations are made.

Appropriation ordinances adopted pursuant to the provisions of this Section need not be first passed for publication, nor be published, and shall be effective immediately upon adoption.

In the event the Council should fail to adopt such ordinance within the prescribed time, the several amounts proposed as expenditures in the budget adopted by the Council, or if the Council has not yet adopted a budget, the several amounts proposed as expenditures in the budget as prepared and submitted by the City Manager to the Council, for the classes or categories of expenditures therein mentioned, so far as they relate to operation and maintenance expenditures, shall be deemed appropriated for such classes or categories of

expenditures until the Council adopts said appropriation ordinance for the current budget year.

#### **SECTION 1208. Appropriations; Changes.**

Appropriations may be amended, revised or supplemented as follows:

- (a) **SUPPLEMENTAL APPROPRIATIONS.** If during the budget year the City Manager certifies or the Council finds that there are available for appropriation revenues in excess of those estimated in the budget, the Council by ordinance may make supplemental appropriations for the year up to the amount of such excess.
- (b) **EMERGENCY APPROPRIATIONS.** To meet a public emergency affecting life, health, property or the public peace the Council may make emergency appropriations. Such appropriations may be made by emergency ordinance in accordance with the provisions of sub-section (e) of Section 605 of this Charter.
- (c) **REDUCTION OF APPROPRIATIONS.** If at any time during the budget year it appears probable to the City Manager that the revenues available will be insufficient to meet the amounts appropriated, he or she shall report to the Council without delay, indicating the estimated amount of the deficit, any remedial action taken by him or her, and his or her recommendations as to any other steps to be taken. The Council shall then take such further action as it deems necessary to prevent or minimize any deficit, and for that purpose it may by ordinance or resolution reduce one or more appropriations.

Also, at any time during the budget year, the Council may repeal or reduce, for any other reason, by ordinance or resolution, any appropriation theretofore made; and, at any time during the budget year, may reappropriate by ordinance all or part of the amount of such reduction for the same or any other class or category of expenditure.

- (d) **TRANSFER OF APPROPRIATIONS BY COUNCIL.** At any time during the budget year, the Council may, by ordinance or resolution, transfer part or all of any unencumbered balance of any appropriation from any department, office or agency to another or from any class or category of expenditure to another class or category of expenditure.

Ordinances or resolutions adopted by the Council pursuant to the provisions of this Section shall be effective immediately upon adoption.

*Amended at election June 7, 1994*

## **SECTION 1209. Lapse of Appropriations.**

Except as otherwise provided elsewhere in this Charter, every appropriation shall lapse at the close of the fiscal year to the extent that they shall not have been expended or encumbered.

## **SECTION 1210. Control of Expenditures by City Manager.**

The several items of expenditure appropriated each fiscal year being based on estimated receipts, income or revenues which may not be fully realized, it shall be incumbent upon the City Manager to establish a schedule of allotments, monthly or quarterly or as he or she may otherwise determine, under which the sums appropriated to the several departments, offices and agencies shall be expended. The City Manager shall revise revenue estimates from time to time, and may revise allotments at any time.

No officer, department or agency of the City, during any budget year, shall expend or incur any obligation to expend money for any class or category of expenditure not authorized by or in excess of the amounts appropriated by the Council, or in excess of any allotments made by the City Manager.

*Amended at election June 7, 1994*

## **SECTION 1211. Funds; General Fund.**

All monies paid into the City Treasury shall be credited to and kept in separate funds in accordance with provisions of this Charter or ordinance. A fund, to be known as the "General Fund," is hereby created as a medium of control and accounting for all City activities excepting activities for which special funds are established and maintained. All revenues and receipts which are not required by this Charter, State law or ordinances to be placed in special funds shall be credited to the General Fund.

## **SECTION 1212. Cash Reserve Fund.**

A revolving fund, to be known as the "Cash Reserve Fund," is hereby created for the payment of any authorized expenditures of the City for any fiscal year in anticipation of and before the collection of taxes and other revenues of the City for such fiscal year, and for the payment of authorized expenses of the City for any fiscal year which became due and payable and must be paid prior to the receipt of tax payments and other revenues for such fiscal year. A reserve shall be built up in said fund from any available sources other than restricted sources in an amount which the Council deems sufficient for said purposes. If necessary, money may be borrowed on tax anticipation notes, subject and pursuant to State law, for the purpose of establishing and maintaining said funds until monies from other available sources are adequate for such purpose. Transfers may be made by the Council from such fund to any other fund or funds of such sum or sums of money that may be required to place or keep such other fund or funds on a cash basis. All monies so transferred from the Cash Reserve Fund to any other fund or funds shall be returned to the Cash Reserve Fund before the end of the fiscal year. The balance in said fund at the end of any fiscal year shall be carried forward in said fund; provided, however, that, to the extent that the amount of

money in such fund should exceed such amount as the Council deems desirable for purposes of such fund, the Council may transfer such excess to any other fund or funds for any other purpose or purposes.

#### **SECTION 1213. Emergency Reserve Fund.**

A fund, to be known as the "Emergency Reserve Fund," is hereby created for the purpose of meeting any public emergency involving or threatening the lives, property or welfare of the people of the City or property of the City. A reserve shall be built up in said fund from any available sources, other than restricted sources, in an amount which the Council deems desirable. Except as otherwise hereinafter provided, money in said fund shall be expended pursuant to appropriations made therefrom by ordinance.

In case of a public emergency involving or threatening the lives, property or welfare of the people of the City or the property of the City, the City Manager shall have the power, until the next meeting of the Council, subject to the availability of funds therefor and, subject to such conditions, restrictions and limitations as the Council may impose, to summon, organize and direct the forces of any department of the City in any needed service, to summon, marshal, deputize or otherwise employ other persons, or to do whatever else he or she may deem necessary for the purpose of meeting the emergency; and for such purpose, to the extent that other monies have not been appropriated or are otherwise unavailable therefor, he or she may expend any unencumbered monies in the Emergency Reserve Fund notwithstanding the fact that such monies may not have been appropriated for such purpose. At the first meeting of the Council following any such action, the City Manager shall present to the Council a full report of what he or she has done to meet the emergency.

*Amended at election June 7, 1994*

#### **SECTION 1214. Other Funds.**

The Council may provide, by ordinance, for the establishment and maintenance of other special funds.

#### **SECTION 1215. Independent Audit.**

The Council shall employ at the beginning of each fiscal year a certified public accountant who shall audit the municipal books, records, accounts and fiscal procedures of all officers and employees of the City who receive, administer or disburse public funds on behalf of the City, and such other officers, employees, departments and agencies as the Council may direct. The Council may order a special audit of any particular department or division of the City government at any time. Such accountant shall at all times abide by the current and most accepted standards of municipal accounting. As soon as practicable after completion of a special audit, if such an audit should be ordered by the Council, said independent accountant shall submit a special report to the Council setting forth his or her findings and recommendations with respect to the matters covered by such special audit. Also, as soon as practicable at the end of the fiscal year, a final report shall be submitted by such independent accountant to the Council setting forth his or her findings and recommendations respecting



the records, accounts, and fiscal procedures covered by his or her general audit. Three (3) copies of each report shall be placed on file in the office of the City Clerk where they shall be available for public inspection.

*Amended at election June 7, 1994*

#### **SECTION 1216. Bonded Debt Limit.**

The City shall not incur any indebtedness evidenced by general obligation bonds which shall in the aggregate exceed the sum of fifteen percent (15%) of the total assessed valuation of all the real and personal property within the City.

#### **SECTION 1217. Bid Requirements.**

Contracts are to be let to the lowest responsible bidder as set forth below:

- (a) **PUBLIC WORKS PROJECTS.** When the expenditure required for a specific "public works project" (hereinafter defined), excluding the cost of any materials, supplies or equipment which City may have acquired or may separately acquire therefor, will exceed the greater of One Hundred Thousand Dollars (\$100,000) or the amount which a general law city of the State of California may legally expend for a "public project" (as defined by State law) without a contract let to a lowest responsible bidder after notice, it shall be let to the lowest responsible bidder after notice.

For purposes of this Section, "public works project" shall mean a project for the construction, erection, improvement or demolition of any public building, street, bridge, drain, ditch, canal, dam, tunnel, sewer, water system, fire alarm system, electrical traffic control system, street lighting system, parking lot, park or playground. "Public works project" shall not mean or include maintenance of any public works project, or any repairs incidental to such maintenance, or the planting, care or maintenance of trees, shrubbery or flowers.

- (b) **NOTICE REQUIREMENT AND PROCEDURE.**

- (1) The notice inviting bids shall set a date for the opening of bids, and shall be published at least once, at least ten (10) days before the date set for opening of bids, in a newspaper of general circulation in the City.
- (2) All bids, including such bidder's security as may be required, shall be presented under sealed cover.
- (3) If the successful bidder fails to execute the contract within the time specified in the notice inviting bids or in the specifications referred to therein, the amount of the security required, if any, may be declared forfeited to the City and may be collected and paid into its General Fund,

and all bonds so forfeited may be prosecuted and the amount thereof collected and paid into such fund.

- (4) All bids shall be publicly opened, and the aggregate bid of each bidder declared at a time and place specified in the notice inviting bids.
  - (5) The Council shall have the right to waive any informalities or minor irregularities in bids or bidding.
- (c) APPRENTICESHIP PROGRAM. Nothing herein shall preclude the City from including in any contract provisions that require contractor participation in an apprenticeship program for at-risk youth.
- (d) SELECTION OF LOWEST RESPONSIBLE BIDDER. If no bids are received, the Council may readvertise, or have the "public works project" for which no bids are received done, without further complying with this Section.
- (1) If two or more bids are the same and the lowest, the Council may accept the one it chooses.
  - (2) In its discretion, the Council may reject any or all bids presented. If it rejects all bids, the Council may, in its discretion, readvertise.
  - (3) If, after rejecting all bids for any "public works project" and after readvertising for bids, the Council finds and declares that the bids were excessive, it may have such "public works project" done by City employees without further complying with this Section.
- (e) SECTION NOT APPLICABLE. The provisions of this Section shall not apply to any of the following public works projects.
- (1) Any public works project done for the City by any public or governmental body or agency.
  - (2) Any public works project done by any public utility which is either publicly owned or is regulated by the Public Utilities Commission of the State of California where such work involves any property of such public utility or is otherwise of direct concern to both the City and such public utility.
  - (3) Any public works project done by a subdivider, developer or owner of real property in connection with the subdivision or development by him or her of any real property, notwithstanding the fact that such may be subject to entire or partial reimbursement from the City.

- (4) Any public works project involving highly technical or professional skill where the peculiar technical or professional skill or ability of the person selected to do such work is an important factor in his or her selection.
- (5) Expenditures deemed by the Council to be of urgent necessity for the preservation of life, health or property, provided the same are authorized by resolution of the Council adopted by the affirmative vote of at least eight (8) members of the Council and containing a declaration of the facts constituting the urgency.
- (6) Situations where solicitation of bids would for any reason be an idle act.
- (7) Any public works project where the contract will cost more than \$5,000,000 and the City Council finds that the "design-build" procurement process would save money or result in faster project completion. In such situations, the City may negotiate and award a "design-build" contract without having to award the contract to the lowest responsible bidder. For purposes of this provision, "design-build" means a procurement process in which both the design and construction of the project are procured from a single entity.

- (f) **PURCHASE OF SUPPLIES MATERIALS AND EQUIPMENT.** The procedures for the purchase of supplies materials and equipment shall be as prescribed by ordinance.

*Amended at elections June 8, 1982, November 8, 1988, November 6, 1990, June 7, 1994, November 8, 1994, November 3, 1998, November 7, 2000 and Amended at election March 2, 2004*

#### **SECTION 1218. Claims Against City.**

Except as otherwise required by the provisions of State law applicable to chartered cities, claims against the City shall be presented and audited as prescribed by ordinance.

#### **SECTION 1219. Property Tax Limit.**

Except as otherwise provided in this Section, the Council shall not levy an ad valorem property tax for any fiscal year in excess of One and 40/100 Dollars (\$1.40) on each One Hundred Dollars (\$100) of assessed value of taxable property in the City unless authorized by the affirmative votes of a majority of the electors voting on a proposition to increase such levy at any election at which the question of such additional levy is submitted to the electors of the City. The number of years that such additional levy is to be made shall be specified in any such proposition. Notwithstanding the foregoing provisions of this Section, there shall be levied and collected at the same time and in the same manner as other ad valorem property taxes of the City are levied and collected, as additional taxes not subject to the foregoing tax limit, if no other provision for the payment thereof is made, a tax sufficient to meet all

obligations of the City for principal and interest on all bonds or judgments due and unpaid or to become due during the fiscal year which constitute general obligations of the City.

#### **SECTION 1220. Revenue Bonds for Off-street Parking or Airport Facilities.**

The Council shall have the power to issue revenue bonds to finance the acquisition, construction, establishment, expansion, improvement, maintenance, operation and administration of off-street vehicular parking facilities within the City (hereinafter in this section referred to as "the project"). The Council shall also have the power to issue revenue bonds to finance the acquisition, construction, establishment, expansion, improvement, maintenance, operation and administration of municipal airport facilities (hereinafter in this Section also referred to as "the project"). Such revenue bonds may be issued in such manner and upon such terms and conditions as may be fixed and established by ordinance of the Council. In the alternative, the Council may issue such revenue bonds under the general laws of the State of California applicable thereto, provided that no election shall be required for the issuance of such revenue bonds. The authorization granted to the Council by this section to issue revenue bonds for any of said purposes is complete, and no additional authorization shall be required for their issuance. Neither such revenue bonds nor the interest accruing thereon shall constitute indebtedness of the City, nor shall be taken into consideration in determining the limit of general obligation bonded indebtedness of the City. Such revenue bonds, the interest accruing thereon and any reserve, sinking fund or special fund created to secure the payment of such bonds shall be a charge solely upon the revenues, or upon such portion thereof as may be fixed by the Council, of the project on account of which such bonds were issued. Such revenue bonds shall not be a charge, lien or encumbrance, legal or equitable, on any funds or property of the City, other than the revenues of the project on account of which they were issued, excepting that on-street parking meter revenues may be pledged as additional security for the payment of revenue bonds issued for any automotive parking facilities pursuant to the Constitution of this State. Neither the credit nor the taxing power of the City shall be deemed to be pledged to or charged with the payment of the principal or interest of any such revenue bonds, nor shall the holders of such revenue bonds have any right to compel the exercise of the taxing power of the City or the forfeiture of any of its properties. The provisions herein contained for the issuance of revenue bonds shall constitute an alternative method of financing said municipal projects.

Nothing contained in this Charter shall preclude the issuance of general obligation bonds of the City for all or any of the above mentioned purposes pursuant to proceedings taken therefor in accordance with the Constitution and General Laws of the State.

#### **SECTION 1221. Revenue Bonds for Public Utilities.**

No revenue bonds shall be issued by the City for the purpose of supplying its inhabitants, or any portion thereof, with water, light, heat, power, railroad or motor vehicle transportation service (other than airport service), or telephone, telegraph or wireless communication service unless authorized by the affirmative vote of a majority of the electors voting on such a proposition in each case.

Nothing herein contained, however, shall be deemed to apply to any of the facilities mentioned in Section 1220. Also, nothing herein contained shall be deemed to deprive the City or its Council of any power which it may have under other Sections of this Charter or under the laws of the State to reimburse, or agree to reimburse, in whole or in part, from any special fund or special revenues, without the affirmative vote of any electors, any subdivider, developer or owner of any real property for any public improvements constructed, installed or furnished by any such person, or for any property dedicated or conveyed to the City by any such person, for or in connection with the subdivision, development or improvement of any real property of any such person.

Also, nothing herein contained shall preclude the issuance of general obligation bonds of the City for any purpose pursuant to proceedings taken therefor in accordance with the Constitution and general laws of the State.

#### **SECTION 1222. Revenue Bonds for Other Purposes.**

Revenue bonds may be issued by the City for any purposes other than those specified in Sections 1220 and 1221 only under and pursuant to the laws of the State of California.

Nothing herein contained, however, shall be deemed to deprive the City or its Council of any power which it may have under other Sections of this Charter or under the laws of the State to reimburse, or agree to reimburse, in whole or in part, from any special fund or special revenues, without the affirmative vote of any electors, any subdivider, developer or owner of any real property for any public improvements constructed, installed or furnished by any such person, or for any property dedicated or conveyed to the City by any such person, for or in connection with the subdivision, development or improvement of any real property of any such person.

Also, nothing herein contained shall preclude the issuance of general obligation bonds of the City for any purpose pursuant to proceedings taken therefor in accordance with the Constitution and general laws of the State.

### **ARTICLE XIII FRANCHISES**

#### **SECTION 1300. Power to Require Franchises.**

Any person, firm or corporation furnishing or proposing to furnish the City or its inhabitants, or any portion thereof, with water, light, heat, gas, electricity, power, transportation, telephone, telegraph, communication, refrigeration, storage, or any other public utility or service, or traversing or proposing to traverse any part of the City for the transmitting or conveying of any such utility or service elsewhere, or using or proposing to use any public street, way, alley or place in the City for any of such purposes or for the operation of any plants, works or equipment for the furnishing thereof, or exercising or proposing to exercise any public utility franchise right or privilege in the City, may be required by ordinance to

have a valid and existing franchise from the City therefor, excepting insofar as the City is prohibited by the Constitution or other applicable laws of the State of California or of the United States of America from requiring such franchise.

#### **SECTION 1301. Authority to Grant Franchises.**

The Council is empowered to grant by ordinance a franchise to any person, firm or corporation, whether operating under an existing franchise or not, to furnish the City and its inhabitants, or any portion thereof, with any of the public utilities or services, or to do any of the things, mentioned in Section 1300 of this Charter.

#### **SECTION 1302. Franchise Terms, Conditions and Procedures.**

Subject to the provisions of this Charter, the Council may grant a franchise pursuant to a procedure prescribed by ordinance or pursuant to a procedure provided by State law. Any ordinance which prescribes a franchise-granting procedure different from that provided by State law shall make reasonable provision for a public hearing, after public notice, on any requested or proposed grant of a franchise. The Council may grant a franchise without calling for bids or may, in its discretion, advertise for bids for sale of a franchise upon such basis, not in conflict with the terms of this Article, as in its judgment is in the public interest. The Council may prescribe, in any procedural ordinance adopted pursuant to this Section, the terms and conditions under which any franchise or franchises will be granted.

The Council, in granting any franchise, shall prescribe the terms and conditions of such franchise in accordance with the applicable provisions of this Charter and any ordinance adopted pursuant thereto, and may in such franchise impose such other and additional terms and conditions not in conflict with said Charter or ordinances, whether governmental or contractual in character, as in the judgment of the Council are in the public interest or as the people, by initiative, indicate they desire to have so imposed.

#### **SECTION 1303. Term of Franchise.**

Every franchise shall be for either a fixed term or for an indeterminate period. If for a fixed term, the franchise shall state the term for which it is granted; if indeterminate, it shall set forth the terms and conditions under which it may be terminated.

#### **SECTION 1304. Purchase or Condemnation by City.**

No franchise grant shall in any way or to any extent impair or affect the right of the City now or hereafter conferred upon it by law to acquire property of the grantee thereof either by purchase or through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or to modify or to abridge either for a term or in perpetuity the City's right of eminent domain with respect to any public utility.

#### **SECTION 1305. Exercising Right Without Franchise.**

The exercise by any person, firm or corporation of any privilege for which a franchise is required without procuring such franchise shall be a misdemeanor and each day that such continues shall constitute a separate violation.

#### **SECTION 1306. Article Not Applicable to City.**

Nothing in this Article shall be construed to apply to the City, or any department thereof, when furnishing any public utility or service.

#### **SECTION 1307. Preservation of Rights.**

Nothing contained in this Article shall be construed to affect or impair any rights, powers or privileges vested in, possessed by or available to the City by virtue of previous Charter provisions relating to franchises.

### **ARTICLE XIV SCHOOL SYSTEM**

#### **SECTION 1400. Effect of Charter.**

The organization, government and administration of the public school system in the City of San José shall not be affected by the adoption of this Charter, but shall continue in existence as is now or hereafter prescribed by the Education Code of the State of California.

### **ARTICLE XV RETIREMENT**

#### **SECTION 1500. Duty to Provide Retirement System.**

Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees; provided, however the Council shall not establish any new or different plan after November 3, 2010 that is not actuarially sound.

*Amended at election November 2, 2010*

#### **SECTION 1501. Exclusions.**

- (a) The Council in its discretion may exclude all or any of the following persons from any or all retirement plans, to wit: Persons mentioned in sub-paragraphs (1), (2), (4), (5), (6), and (7) of sub-section (a) of Section 1101 of this Charter; all persons employed or whose services are contracted for pursuant to any transfer, consolidation or contract mentioned or referred to in Section 1109 of this Charter; persons employed pursuant to Section 1110 of this Charter; persons in City service primarily for training, study or educational purposes; persons employed or paid on a part-time, per diem, per hour or any basis other than a monthly basis; temporary employees; persons employed pursuant to any relief or anti-poverty program primarily for the purpose of giving relief or aid to such persons. Also, persons who are members of any other retirement or pension system, other than the federal social security system or any other federal retirement or pension system, and who are receiving credit in such other system for service rendered to the City may be excluded, as to such service, from any such plan or plans.
- (b) On or after November 3, 2010, the Council, may by ordinance, exclude any officer or employee hired on or after the ordinance's effective date from any retirement plan or benefit of any retirement plan in existence on the effective date of the ordinance. Any such ordinance shall be subject to the requirements of applicable law.

*Amended at election November 2, 2010*

#### **SECTION 1502. Authority to Join Other Systems.**

Subject to other provisions of this Article, the City, by and through its Council, is hereby empowered, but not required, to join or continue as a contracting agency in any retirement or pension system or systems existing or hereafter created under the laws of the State of California or of the United States of America to which municipalities and municipal officers or employees are eligible.

#### **SECTION 1503. Continuance of Existing Retirement Systems.**

Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. The foregoing provisions of this Section shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San José or by the people of the City at the time of adoption or amendment of any such retirement system or systems. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans



for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.

**SECTION 1504. Minimum Benefits for Certain Members of Police and Fire Departments.**

The Council, by ordinance, shall provide the following minimum benefits for the following members of the Police and Fire Departments of the City excepting those members who are hereinafter excluded from the application of this Section.

- (a) **RETIREMENT.** An officer or employee of the Police Department or Fire Department of the City shall be entitled, upon his or her request, to be retired from City service and to receive during such retirement until his or her death a monthly retirement allowance equal to fifty percent (50%) of his or her "final compensation," hereinafter defined, if he or she:
  - (1) Completes twenty (20) years of "service," hereinafter defined, and attains, while holding such office or employment, the age of fifty-five (55) years or more; or
  - (2) Completes twenty (20) years of "service," hereinafter defined, is "disabled," as such term is hereinafter defined, while holding such office or employment, and applies for such retirement while holding such office or employment.
- (b) **CONTRIBUTIONS.** Contributions required to be made by officers and employees of the Police Department or Fire Department of the City to any retirement fund, plan or system for or because of current service or current service benefits of or for such officers or employees, in relation to and as compared with contributions made by the City for such purpose, shall not exceed the ratio of three (3) for such officers and employees to eight (8) for the City. The foregoing provision, however, does not apply to any contributions required for or because of any prior service or prior service benefits, nor to any contributions required for or because of membership in the Federal Old Age and Survivorship Insurance Program or any other Federal insurance or retirement program or because of benefits provided by any such program.
- (c) **ACTUARIAL SOUNDNESS.** Any retirement plan or system established for officers or employees of the Police or Fire Departments shall be actuarially sound; and an actuarial report thereon shall be obtained at intervals not exceeding five (5) years.
- (d) **DEFINITIONS.** As used in this Section, "service" means service as defined on the effective date of this Charter in Topic 5 of Part 3A of Chapter 9 of Article II of the San José Municipal Code; and "final compensation" means final compensation as defined on the effective date of this Charter in Topic 1 of Part

3A of Chapter 9 of Article II of the San José Municipal Code, except that with respect to officers and employees who on the effective date of this Charter are members of the Police and Fire Department Retirement Plan established by Part 3 of Chapter 9 of Article II of the San José Municipal Code "final compensation" shall be deemed to mean the average monthly pay received by any such officer or employee during the three (3) years immediately preceding his or her request for retirement. Also, as used in this Section, "disabled" means the incurrence of a disability, short of death, of permanent duration, resulting from injury or disease, which renders the officer or employee incapable of continuing to satisfactorily assume the responsibilities and perform the duties and functions of his or her office or position and of any other office or position in the same classification of offices or positions to which the City may offer to transfer him or her; provided, however, that such a disability shall be deemed to be of permanent duration if the City or any of its authorized agencies finds that such disability will continue at least until the disabled person attains the age of fifty-five (55) years.

- (e) MISCELLANEOUS. The benefits hereinabove specified are minimum only; and the Council, in its discretion, may grant greater or additional benefits. The City shall not be deemed obligated, by virtue of any of the above provisions, to continue to employ any person or persons until he or she or they qualify for or request any retirement benefits. Also, anything hereinabove to the contrary notwithstanding, any retirement allowance may be terminated and cancelled if the person otherwise entitled thereto commits treason or is convicted of a felony.
- (f) PERSONS EXCLUDED. The provisions of this Section shall not apply to any of the following persons, the same being hereby excluded from the application of the above provisions, to wit: Any and all persons hereinabove mentioned or referred to in Section 1501; officers or employees whose principal duties are those of a telephone operator, clerk, stenographer, secretary, machinist or mechanic; and any and all other officers or employees whose principal duties or functions do not fall clearly within the scope of active law enforcement or active fire fighting and prevention service even though such an officer or employee is subject to occasional call or is occasionally called upon to perform duties or functions within the scope of active law enforcement service or active fire fighting or prevention service, excepting persons employed and qualifying as police patrolmen or in equal or higher rank in the police department irrespective of the duties to which they are assigned, or persons employed and qualifying as firemen, fire fighters, hosemen or in equal or higher rank in the fire department irrespective of the duties to which they are assigned. Also, the provisions of this Section shall not apply to any person or persons who have been retired from the service of the City prior to the effective date of this Charter.

*Amended at election June 7, 1994*

**SECTION 1505. Minimum Benefits for Officers and Employees Other Than Members of the Police or Fire Departments.**

The Council, by ordinance, shall provide the following minimum benefits for all officers and employees of the City excepting those who are hereinafter excluded from the application of this Section.

- (a) **SERVICE RETIREMENT.** An officer or employee of the City, other than those hereinafter excluded, shall be entitled, upon his or her request, to be retired from City service and to receive during such retirement until his or her death an annual retirement allowance equal to two percent (2%) of his or her "final compensation," hereinafter defined, per each year of his or her first twenty-five (25) years of service, hereinafter defined, plus one percent (1%) of such final compensation per each year of his or her service in excess of twenty-five (25) years, subject to a maximum of eighty-five percent (85%) of such final compensation, if he or she:
  - (1) Completes twenty-five (25) years or more of "service," hereinafter defined, and attains, while holding such office or employment, the age of fifty-five (55) years or more; or
  - (2) Attains, while holding such office or employment, the age of seventy (70) years or more regardless of his or her years of service.
- (b) **DISABILITY RETIREMENT.** An officer or employee of the City, other than those hereinafter excluded, who has completed ten (10) years of "service," hereinafter defined, and is "disabled," as such term is hereinafter defined, while holding such office or employment, and applies for a disability retirement while holding such office or employment, shall be entitled, upon his or her request, to be retired from City service because of such disability, and to thereafter receive, during the period of such disability, a monthly disability retirement allowance equal in amount to the monthly disability retirement allowance provided for in Topic 16 of Part 4 of Chapter 9 of Article II of the San José Municipal Code as said Topic and Chapter read on the effective date of this Charter.
- (c) **CONTRIBUTIONS.** Contributions required to be made by officers and employees of the City, other than those hereinafter excluded, to any retirement fund, system or plan for or because of current service or current service benefits of or for such officers or employees, in relation to and as compared with contributions made by the City for such purpose, shall not exceed the ratio of three (3) for such officers and employees to eight (8) for the City. The foregoing provision, however, does not apply to any contributions required for or because of any prior service or prior service benefits, nor to any contributions required for or because of membership in the Federal Old Age and Survivorship Insurance Program or any other Federal insurance or retirement program or for or because of any benefits provided by any such program.

- (d) **DEFINITIONS.** As used in this Section, "service" means all service for which an officer or employee is entitled to credit under the provisions of the retirement system established by Part 4 of Chapter 9 of Article II of the San José Municipal Code as such Part 4 reads on the effective date of this Charter; and "final compensation" means final compensation as defined on the effective date of this Charter in Topic 1 of Part 4 of Chapter 9 of Article II of the San José Municipal Code. Also, as used in this Section, "disabled" means the incurrence of a disability, short of death, resulting from injury or disease, which renders the officer or employee incapable of continuing to satisfactorily assume the responsibilities and perform the duties and functions of his or her office or position and of any other office or position in the same classification of offices or positions to which the City may offer to transfer him or her.
- (e) **MISCELLANEOUS.** The benefits hereinabove specified are minimum only; and the Council in its discretion, may grant greater or additional benefits. The City shall not be deemed obligated, by virtue of any of the above provisions, to continue to employ any person or persons until he or she or they qualify for or request any retirement benefits. Also, anything hereinabove to the contrary notwithstanding, any service or disability retirement allowance may be terminated and cancelled if the person otherwise entitled thereto commits treason or is convicted of a felony.
- (f) **PERSONS EXCLUDED.** The provisions of this Section shall not apply to any of the following persons, the same being hereby excluded from the application of the above provisions, to wit: Any and all persons mentioned or referred to in Section 1501; and any and all officers and employees in the Police Department and Fire Department of the City; any person or persons who have been retired from the service of the City prior to the effective date of this Charter; and any and all persons to whom, on the effective date of this Charter, the provisions of Topic 15A of Part 4 of Chapter 9 of Article II of the San José Municipal Code, as it reads on the effective date of this Charter, do not apply.

*Amended at election June 7, 1994*

#### **SECTION 1506. Conformance to State and Federal Law.**

Notwithstanding any other provisions of this Article, the City Council may, by ordinance, and subject to the provisions of California Government Code Section 3500 et seq., provide for the conformance of any retirement plan or plans established and maintained by the City of San José to Section 415 of the United States Internal Revenue Code or other applicable provisions of the laws of the United States or the State of California.

*Added at election June 5, 1990*

## **ARTICLE XV-A RETIREMENT**

### **SECTION 1501-A. Findings.**

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter "Essential City Services").

The City's ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City's retirement plans is expected to continue to increase in the near future. In addition, the City's costs for other post employment benefits -- primarily health benefits -- are increasing. To adequately fund these costs, the City would be required to make additional cuts to Essential City Services.

By any measure, current and projected reductions in service levels are unacceptable, and will endanger the health, safety and well-being of the residents of San Jose.

Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that post employment benefits be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that post employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

The Charter currently provides that the City retains the authority to amend or otherwise change any of its retirement plans, subject to other provisions of the Charter.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

### **SECTION 1502-A. Intent.**

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned and accrued for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree or to take away any cost of living increases paid to retirees as of the effective date of the Act.

The City expressly retains its authority existing as of January 1, 2012, to amend, change or terminate any retirement or other post employment benefit program provided by the City pursuant to Charter Sections 1500 and 1503.

#### **SECTION 1503-A. Act Supersedes All Conflicting Provisions.**

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, ordinances, resolutions or other enactments.

The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act. The goal is that such ordinances shall become effective no later than September 30, 2012.

#### **SECTION 1504-A. Reservation of Voter Authority.**

The voters expressly reserve the right to consider any change in matters related to pension and other post employment benefits. Neither the City Council, nor any arbitrator appointed pursuant to Charter Section 1111, shall have authority to agree to or provide any increase in pension and/or retiree healthcare benefits without voter approval, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

#### **SECTION 1505-A. Reservation of Rights to City Council.**

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this Act, to make any and all changes to retirement plans necessary to ensure the preservation of the tax status of the plans, and at any time, or from time to time, to amend or otherwise change any retirement plan or plans or establish new or different plan or plans for all or any officers or employees subject to the terms of this Act.

#### **SECTION 1506-A. Current Employees.**

- (a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).
- (b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but no more than 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.
- (c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.
- (d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.
- (e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

#### **SECTION 1507-A. One Time Voluntary Election Program ("VEP").**

The City Council shall adopt a Voluntary Election Program ("VEP") for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of IRS approval. The VEP shall permit Current Employees a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if legally required) acknowledging that the employee irrevocably relinquishes his or her existing level of retirement benefits and has voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

- (a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%) earned and accrued for service prior to the VEP's effective date;

thus, the benefit accrual rate earned and accrued by individual employees for that prior service shall be preserved for payment at the time of retirement.

(b) Pension benefits under the VEP shall be based on the following limitations:

- (i) The accrual rate shall be 2.0% of "final compensation", hereinafter defined, per year of service for future years of service only.
- (ii) The maximum benefit shall remain the same as the maximum benefit for Current Employees.
- (iii) The current age of eligibility for service retirement under the existing plan as approved by the City Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 57 for employees in the Police and Fire Department Retirement Plan and the age of 62 for employees in the Federated City Employees' Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.
- (iv) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually on July 1 of each year starting July 1, 2017.
- (v) Cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.
- (vi) "Final compensation" shall mean the average annual pensionable pay of the highest three consecutive years of service.
- (vii) An employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).

(c) The cost sharing for the VEP for current service or current service benefits ("Normal Cost") shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan.



(d) VEP Survivorship Benefits.

- (i) Survivorship benefits for a death before retirement shall remain the same as the survivorship benefits for Current Employees in each plan.
- (ii) Survivorship benefits for a spouse or domestic partner and/or child(ren) designated at the time of retirement for death after retirement shall be 50% of the pension benefit that the retiree was receiving. At the time of retirement, retirees can at their own cost elect additional survivorship benefits by taking an actuarially equivalent reduced benefit.

(e) VEP Disability Retirement Benefits.

- (i) A service connected disability retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 50% of the average annual pensionable pay of the highest three consecutive years of service.

- (ii) A non-service connected disability retirement benefit shall be as follows:

The employee or former employee shall receive 2.0% times years of City Service (minimum 20% and maximum of 50%) based on the average annual pensionable pay of the highest three consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.

- (iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

**SECTION 1508-A. Future Employees – Limitation on Retirement Benefits – Tier 2.**

To the extent not already enacted, the City shall adopt a retirement program for employees hired on or after the ordinance enacting Tier 2 is adopted. This retirement program – for new employees – shall be referred to as "Tier 2."

The Tier 2 program shall be limited as follows:

- (a) The program may be designed as a "hybrid plan" consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan. If the City provides a defined benefit plan, the City's cost of such plan shall not exceed 50% of the total cost of the Tier 2 defined benefit plan (both normal cost and unfunded liabilities). The City may contribute to a defined contribution or other retirement plan only when and to the extent

the total City contribution does not exceed 9%. If the City's share of a Tier 2 defined benefit plan is less than 9%, the City may, but shall not be required to, contribute the difference to a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.

(d) For any defined benefit plan, "final compensation" shall mean the average annual earned pay of the highest three consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation.

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 2% per year of service, not to exceed 65% of final compensation.

(f) For any defined benefit plan, an employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).

(g) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System or at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.

(h) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan subject to this section shall create a vested right to any benefit.

#### **SECTION 1509-A. Disability Retirements.**

(a) To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

(b) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:

(i) An employee cannot do work that they did before; and

(ii) It is determined that

1) an employee in the Federated City Employees' Retirement System cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); or

2) an employee in the Police and Fire Department Retirement Plan cannot perform any other jobs described in the City's classification plan in the employee's department because of his or her medical condition(s); and

(iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.

(c) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

(d) The City may provide matching funds to obtain long term disability insurance for employees who do not qualify for a disability retirement but incur long term reductions in compensation as the result of work related injuries.

(e) The City shall not pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to the service connected disability retirement allowance to eliminate duplication of benefits for the same cause of disability, consistent with the current provisions in the Federated City Employees' Retirement System.

#### **SECTION 1510-A. Emergency Measures to Contain Retiree Cost of Living Adjustments.**

If the City Council adopts a resolution declaring a fiscal and service level emergency, with a finding that it is necessary to suspend increases in cost of living payments to retirees the City may adopt the following emergency measures, applicable to retirees (current and future retirees employed as of the effective date of this Act):

(a) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees in whole or in part for up to five years. The City Council shall restore COLAs prospectively (in whole or in part); if it determines that the fiscal emergency has eased sufficiently to permit the City to provide essential services protecting the health and well-being of City residents while paying the cost of such COLAs.

(b) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current Employees who did not opt into the VEP and 1.5% for Current Employees who opted into the VEP and 1.5% for employees in Tier 2.

#### **SECTION 1511-A. Supplemental Payments to Retirees.**

The Supplemental Retiree Benefit Reserve ("SRBR") shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.

#### **SECTION 1512-A. Retiree Healthcare.**

(a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

(b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

(c) **Low Cost Plan.** For purposes of retiree healthcare benefits, "low cost plan" shall be defined as the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System.

#### **SECTION 1513-A. Actuarial Soundness (for both pension and retiree healthcare plans).**

(a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted pursuant to the Act shall: (i) be actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) be prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.

(b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.

(c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:

- (i) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and
  - (ii) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.
- (d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:
- (i) the funding objectives and actuarial assumptions of the plans; and
  - (ii) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

#### **SECTION 1514-A. Savings.**

In the event Section 6 (b) is determined to be illegal, invalid or unenforceable as to Current Employees (using the definition in Section 6(a)), then, to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions. Any pay reductions implemented pursuant to this section shall not exceed 4% of compensation each year, capped at a maximum of 16% of pay.

#### **SECTION 1515-A. Severability.**

(a) This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, sub-section, sentence or clause ("portion") of this Act is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this amendment. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of whether any one or more portions of the Act are found invalid. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect. In particular, if any portion of this Act is held invalid as to Current Retirees, this shall not affect the application to Current Employees. If any portion of this Act is held invalid as to Current Employees, this shall not affect the application to New Employees. This Act shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Act be interpreted or implemented by the City, courts and others in a manner that facilitates the purposes set forth herein.

(b) If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council

for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective.

*Added at election November 6, 2012*

## **ARTICLE XVI ELECTIONS**

### **SECTION 1600. Municipal Elections.**

All municipal elections shall be held in accordance with the following:

- (a) **REGULAR MUNICIPAL ELECTIONS.** A Regular Municipal Election is either a regularly scheduled Primary or Run-off Municipal Election. Such elections shall be held every two years, with the election for Mayor and for the odd numbered Council Districts being every four (4) years beginning with 1994, and the election for the even numbered Council Districts being every four (4) years beginning in 1996. Each member's term shall commence on the first day of January next following, and end on the last day of December in the fourth calendar year succeeding, the date of the member's election. A regularly scheduled Primary Election shall be held on the same date that the State of California holds its Direct Primary Election. A Run-off Municipal Election shall be held on the same date the State of California holds its Statewide General Election.
- (b) **GENERAL ELECTIONS.** Elections which are held simultaneously in all districts of the City, whether municipal, county or state elections are referred to as General Elections.
- (c) **SPECIAL MUNICIPAL ELECTIONS.** Special Municipal Elections are elections scheduled pursuant to Section 1601. The dates of any Special Municipal Election shall be set by resolution.
- (d) **RUN-OFF QUALIFICATION.** The two candidates who poll the greatest number of votes for office in the Primary Municipal Election shall be the only candidates whose names shall appear on the ballot as candidates for such office at the following Run-off Municipal Election.
- (e) **TIES.** Anything elsewhere to the contrary notwithstanding, all ties in any municipal election shall be decided by lot during open meeting of the Council, under the direction of the Council.
- (f) **DEATH OF A CANDIDATE.** If a candidate dies after the filing of nomination papers for the primary election, the deceased candidate is treated as a candidate for all election purposes. If the deceased candidate is elected, the office will be

declared vacant as of the beginning of the term of office for which the election was held. The position shall be filled in accordance with Section 410.

- (g) **MAJORITY OF VOTES.** No person shall be declared elected to the office of the Mayor or Council member at any municipal election unless the person receives a majority of the votes cast for such office.

*Amended at elections June 7, 1966, June 2, 1970, June 7, 1972, November 8, 1994 and  
Amended at election March 26, 1996*

#### **SECTION 1601. Special Municipal Elections.**

All municipal elections, other than Regular Municipal Elections, shall be deemed to be Special Municipal Elections.

No Special Municipal Election shall be held at any time other than at the time of a Regular Municipal Election or a General Election, except in any of the following situations:

- (a) Where such election is held pursuant to Section 410 to fill a vacancy in the Council;
- (b) Where such election is held pursuant to the initiative, referendum and recall provisions of Sections 1603 and 1604;
- (c) Where the Council calls such an election pursuant to any provision of Sections 34450 and following of the California Government Code;
- (d) Where such election is consolidated with a state, county or school district election held in the County of Santa Clara; or
- (e) Where the holding of a Special Municipal Election at another time is authorized by the affirmative vote of ten (10) members of the Council.

Subject to the above provisions, Special Municipal Elections shall be held at such times and for such purposes as the Council may authorize.

*Amended at election June 2, 1970*

*Amended at election November 7, 1978*

*Amended at election November 8, 1994*

#### **SECTION 1602. Election Procedure.**

Except as otherwise provided by ordinance hereafter enacted, all municipal elections shall be held in accordance with the provisions of the Elections Code of the State of California, as the same now exist or may hereafter be amended, for the holding of elections in cities, insofar as the same are not in conflict with this Charter.

### SECTION 1603. Initiative, Referendum and Recall.

The powers of initiative, referendum and the recall of elected municipal officers are hereby reserved to the electors of the City. The provisions of the Elections Code of the State of California, as the same now exist or may hereafter be amended, governing the initiative and referendum and the recall of municipal officers in cities shall be applicable insofar as the same are not in conflict with this Charter; provided, however, that the number of signatures required shall be as follows:

- (a) **INITIATIVE.** To initiate proceedings for the exercise of the power of initiative, either of the following provisions shall apply as is applicable:

- (1) If the petition is signed by duly qualified electors of the City equal in number to at least eight percent (8%) of the number of persons eligible to vote according to the last report of registration filed by the County Registrar of Voters with the Secretary of State, which is in effect at the time the notice of intent to circulate the petition is published, and contains a request that the proposed ordinance be submitted immediately to a vote of the people at a Special Municipal Election, the Council shall either pass the proposed ordinance for publication, without alteration, at the regular meeting at which it is presented by the City Clerk and adopt said ordinance within ten (10) days after it is presented, or immediately call a Special Municipal Election at which the ordinance, without alteration, shall be submitted to a vote of the voters of the City.
- (2) If the petition is signed by duly qualified electors of the City equal in number to at least five percent (5%) of the number of persons eligible to vote according to the last report of registration filed by the County Registrar of Voters with the Secretary of State, which is in effect at the time the notice of intent to circulate the petition is published, and the ordinance petitioned for is not required to be, or for any reason is not, submitted to the voters at a Special Municipal Election, and is not adopted without alteration by the Council, then the proposed ordinance, without alteration, shall be submitted by the Council to the voters at the next General Election.

In the event that a petition is submitted in accordance with the provisions of either subparagraphs (1) or (2) of subsection (a), and the Council submits said proposed ordinance to a vote of the voters of the City, the Council may not at the same time submit an alternative ordinance.

- (b) **REFERENDUM.** To initiate proceedings for the exercise of the power of referendum, the petition shall be signed by duly qualified electors of the City equal in number to at least eight percent (8%) of the number of persons eligible to vote according to the last report of registration filed by the County Registrar



of Voters with the Secretary of State, which is in effect at the time of adoption of the ordinance or measure which is the subject of the petition.

- (c) **RECALL OF THE MAYOR.** To initiate proceedings for the exercise of the power of recall of the Mayor, the petition shall be signed by duly qualified electors of the City equal in number to at least twelve percent (12%) of the number of persons eligible to vote according to the last report of registration filed by the County Registrar of Voters with the Secretary of State, which is in effect at the time the notice of intent to circulate the petition is published.
- (d) **RECALL OF COUNCIL MEMBER.** To initiate proceedings for the exercise of the power of recall of a Council member elected by a District, the petition shall be signed by duly qualified electors of the District equal in number to at least twelve percent (12%) of the number of persons residing in the District eligible to vote according to the last report of registration filed by the County Registrar of Voters with the Secretary of State, which is in effect at the time the notice of intent to circulate the petition is published.

*Amended at election June 2, 1970*

*Amended at election November 7, 1978*

*Amended at election June 6, 1994*

*Amended at election November 8, 1994*

#### **SECTION 1604. Removal of City Manager.**

The electors of the City do hereby reserve the power to remove from his or her office the person holding the position of City Manager. The provisions of the Elections Code of the State of California governing the recall of holders of elective offices of cities, as they now exist or may hereafter be amended, shall be applicable, insofar as the same are not in conflict with this Charter, to the removal from his or her office of the person holding the position of City Manager, the same as if the position of City Manager were an elective office; provided, however, that:

- (a) To initiate proceedings for the exercise of said power, the petition shall be signed by duly qualified electors of the City equal in number to at least the same percentage of the number of persons eligible to vote according to the last report of registration filed by the County Registrar of Voters with the Secretary of State, which is in effect at the time the notice of intent to circulate the petition is published, as is required for recall petitions under the provisions of sub-section (c) of Section 1603 of this Charter.
- (b) If a vacancy occurs in the office of City Manager after a removal petition has been filed, no election need be held;
- (c) There shall be no nomination of candidates to succeed the incumbent in the event the incumbent is removed from office. If the incumbent is removed from his or her office pursuant to the provisions of this Section, a successor shall be appointed by the Council.

No person who has been removed from the office of City Manager pursuant to the provisions of this Section shall be reappointed thereto within a period of four (4) years from and after date of such removal.

*Amended at election June 7, 1994*

## ARTICLE XVII GENERAL PROVISIONS

### SECTION 1700. Parks.

Except as otherwise provided elsewhere in this Charter, the public parks of the City shall be inalienable unless otherwise authorized by the affirmative votes of the majority of the electors voting on such a proposition in each case; provided and excepting, however, that the same or any interest therein, or any concessions or privileges therein or in any building or structure situate therein, may be leased by the Council, or the Council may grant permits or licenses for the same, without any vote of any electors, if the term of each such lease or permit does not exceed three (3) years. As used herein "public parks" means any and all lands of the City which have been or are dedicated, improved and opened to the public for public park purposes.

### SECTION 1700.1. Council Authority to Enter into Long Term Agreements

The City Council may enter into long term leases, concessions, permits or other agreements ("Agreements") with individuals or non-City entities, to allow use of public parks for terms of up to 25 years at a time, without voter approval, if the Council determines that Agreement would benefit the community and that the following conditions have been met:

- (i) the Agreement would enhance the designated recreational purposes for the public park;
- (ii) the public park subject to the Agreement is more than 5 acres in size and has at least 1 Community Serving Amenity, as defined below;
- (iii) the Agreement complies with an adopted City Council policy for Long Term Agreements in Parks, which defines community outreach standards, requirements for affordable access to the public park, periodic performance reviews, and early termination rights among other things; and
- (iv) any funds received by the City from the Agreement shall be used for recreational purposes.

A "Community Serving Amenity" is defined as one of the following: Pool, Community Center or Reservable Sports Field or similar recreational improvements in a park and that is described in the City's approved master strategic plan for parks and community facilities. Nothing herein is intended to limit City Council's authority to enter into other long term agreements on parks which have been approved by the voters.

*Added at election November 4, 2008*

#### **SECTION 1701. Underground Parking Stations in Parks.**

Whenever the Council finds with respect to any public park, plaza, or square that the construction, when completed, in the sub-surface space thereunder of a public parking station (including all entrance and exit approaches, openings, and ramps, ventilators, elevator shafts and other appurtenances to such parking station) and/or the operation in the subsurface space thereunder of a public parking station (including services incidental to such operations such as sale of gasoline, oil and accessories and lubrication and oiling of vehicles) will not be in any material respect or degree detrimental to public park, plaza or square purposes or in contravention of any conditions under which such public park, plaza or square was received, the City, without the affirmative vote of any electors, may construct and/or operate such public parking station in the sub-surface space under such public park, plaza or square, or said Council may lease to the highest responsible bidder for a term not to exceed fifty (50) years, and upon such other terms and conditions as it may determine, sub-surface space under such public park, plaza or square for the purpose of constructing and/or operating therein such public automobile parking station. Nothing contained in this Section shall be deemed to deprive the City or its Council of any powers, nor limit or restrict any powers which the City or its Council may have, with respect to public parks, under or by virtue of other provisions of this Charter.

#### **SECTION 1702. Streets in Parks.**

The Council, by ordinance, without the affirmative vote of any electors, may authorize the opening, establishment and/or maintenance of streets or other public ways in or through any of the public parks, public places or other public property of the City. Nothing contained in this Section shall be deemed to deprive the City or its Council of any powers, nor limit or restrict any powers which the City or the Council may have, with respect to public parks, under or by virtue of other provisions of this Charter.

#### **SECTION 1703. Validity of Charter; Severability.**

If any provision of this Charter, or the application thereof to any person or circumstances is held invalid, the remainder of the Charter and the application of such provision to other persons or circumstances shall not be affected thereby.

#### **SECTION 1704. Definitions.**

Unless the provisions of the context otherwise require, as used in this Charter:

- (a) "Shall" is mandatory and "may" is permissive;
- (b) "City" is the City of San José and "department," "board," "commission," "agency," "officer," or "employee" is a department, board, commission, agency, officer or employee, as the case may be, of the City of San José;
- (c) "Council" is the Council of the City of San José;

- (d) A "member of the Council" means any one of the members of the Council, including the Mayor;
- (e) "County" is the County of Santa Clara;
- (f) "State" is the State of California;
- (g) "Newspaper of general circulation within the City" is defined by Section 6000 of the Government Code of the State of California;
- (h) The masculine gender includes the feminine and neuter.
- (i) "Council Appointees" are the City Manager, the City Attorney, the City Clerk, the Independent Police Auditor and the City Auditor

*Amended at election November 4, 1980*

*Amended at election November 4, 1986*

*Amended at election November 3, 1992*

*Amended at election November 5, 1996*

#### **SECTION 1705. Effective Date.**

This Charter shall be effective from the time of its approval by the State legislature.

### **ARTICLE XVIII TRANSITIONAL PROVISIONS**

#### **SECTION 1800. Existing Laws, Ordinances, Regulations, Etc.**

All City ordinances, resolutions, orders and regulations which are in force when this Charter becomes effective are repealed to the extent that they conflict or are inconsistent with, or interfere with the effective operation of, this Charter or of any ordinances or resolutions adopted pursuant thereto. To the extent that the Constitution of the State of California permits, all State laws relating to or affecting this City or its agencies, officers or employees which are in force when this Charter becomes effective are superseded to the extent that they conflict or are inconsistent with, or interfere with the operation of, this Charter or of ordinances or resolutions adopted pursuant thereto.

All City ordinances, resolutions, orders and regulations which are in force when this Charter becomes effective, if and to the extent that they are not repealed by the provisions of the immediately preceding paragraph, shall remain in full force and effect until amended or repealed pursuant to the provisions of this Charter.

Without limitation of the general operation of the above provisions of this Section, or of the number or nature of the provisions to which it applies, the Council is hereby empowered to

amend or repeal any City ordinance, resolution, rule or regulation which is in force when this Charter becomes effective notwithstanding the fact that such ordinance, rule or regulation may have been adopted or approved by the people of the City prior to the time this Charter becomes effective.

#### **SECTION 1801. Pending Matters.**

All rights, claims, actions, orders, contracts and legal or administrative proceedings shall continue except as modified, terminated or otherwise disposed of pursuant to the provisions of this Charter, and in each case shall be maintained, carried on or dealt with by the City department, office or agency appropriate under this Charter.

#### **SECTION 1802. Continuity of Agencies.**

Any office, department or agency provided for in this Charter with powers and duties the same or substantially the same as those of an office, department, or agency heretofore existing shall be deemed to be a continuation of such office, department or agency and shall exercise such powers and duties as it has under this Charter in continuation of their exercise by the office, department or agency by which the same were heretofore exercised and shall have the power to continue any business, proceedings or other matter within the scope of its powers and duties under this Charter commenced by an office, department or agency by which such powers and duties were heretofore exercised.

#### **SECTION 1803. Existing Members of Boards and Commissions.**

Until otherwise provided by the Council, all persons who at the time this Charter takes effect are members of any City boards and commissions, excepting the Planning Commission, the Civil Service Commission and the Board of Library Trustees, shall continue to hold their respective offices and perform the duties thereof, to the extent that such duties as are not in conflict with other provisions of this Charter, until the expiration of their respective terms or until sooner removed therefrom by the Council. Membership in the Planning Commission and in the Civil Service Commission shall be governed by other applicable provisions of this Charter. The Board of Library Trustees is hereby abolished, and membership therein vacated, as of the effective date of this Charter; provided, however, that the Council may, in its discretion, establish a new library board and grant it such powers and duties, consistent with other provisions of this Charter, as the Council may deem appropriate.

#### **SECTION 1804. Existing Officers and Employees.**

Subject to the provisions of Section 1604, the persons holding the offices of City Manager, City Clerk and City Attorney, respectively, at the time this Charter takes effect shall continue to hold such offices and perform the respective duties thereof, as established by or pursuant to this Charter, until removed by Council. Subject to such removal, change and control as is required, provided or authorized in or by other provisions of this Charter, all other persons holding other appointive offices or positions in the Civil Service of the City at the time this Charter takes effect, excepting members of boards and commissions, shall continue to

perform the duties of their respective offices or positions until persons are appointed, pursuant to this Charter, to succeed to or take over their duties or until relieved pursuant to this Charter, of their duties.

#### **SECTION 1805. Transfers, Etc.**

If because of this Charter all or substantially all of the duties or work of any position or employment which was in the Classified Service under the provisions of the immediately preceding Charter are transferred from one department or office to another department or office, then in that event, unless otherwise provided by the Council, such Classified positions or employments shall be deemed transferred to the new department or office and the persons holding such positions or employments on the effective date of this Charter shall continue to hold such positions or employments and perform the duties and work thereof in the new department or office, subject to such removal, supervision and control as is provided for elsewhere in this Charter. If, upon or after the transfer by this Charter of such duties or work of such Classified positions or employments to another department or office, said positions are discontinued and new or revised Classified positions are created, the persons holding the original positions shall be deemed qualified for transfer or appointment to, and may be transferred or appointed to, the new or revised positions, without examination or further compliance with any Civil Service regulations governing transfers or appointments, if the duties or work thereof are substantially similar to or were substantially included within the duties or work of their prior positions or employments.

If because of this Charter any of the duties or work of any position or employment which was in the Unclassified Service under the provisions of the immediately preceding Charter are transferred from one department or office to another and thereafter assigned in such new department or office to a Classified position in the new department or office, then in that event, unless otherwise provided by the Council, the person holding the original Unclassified position or employment shall be deemed qualified for transfer or appointment to, and may be transferred or appointed to, the new Classified position to which any of his or her former duties or work have been transferred or assigned, without examination or further compliance with any Civil Service regulations governing transfers or appointments, if the duties or work of the new Classified position are substantially similar to or were substantially included within the duties or work of his or her prior position or employment.

Any person who is transferred pursuant to the preceding provisions of this Section from a Classified or Unclassified position or employment in one department or office to a Classified position or employment in another department or office shall acquire a non-probationary status in the classification within which such new position or employment is included pursuant to this Charter if such person has been performing the duties of such position, employment or classification for a period of at least six (6) months immediately prior to the effective date of this Charter; but if such person on the effective date of this Charter has been performing such duties for a period of less than six (6) months, he or she shall have a probationary status in the new classification and will acquire non-probationary status only if and when he or she completes six (6) months of such service in such position, employment or classification.

*Amended at election June 7, 1994*

## LEGISLATIVE HISTORY (CHRONOLOGICAL)

Charter approved at election April 13, 1965

Assembly Concurrent Resolution No. 104

Cited: Resolution Chapter 76, Statutes 1965

Statutes 1965, Volume 3, page 5122

Filed with Secretary of State May 4, 1965

Amendments to Sections 407, 800, 1000 and 1600 approved at election June 7, 1966

Assembly Concurrent Resolution No. 67

Cited: Resolution Chapter 107, Statutes 1966

Statutes 1966, page 885

Filed with Secretary of State June 23, 1966

Amendment to Section 410 approved at election June 6, 1967

Assembly Concurrent Resolution 75

Cited: Resolution Chapter 99, Statutes 1967

Statutes 1967, Volume 3, page 4672

Filed with Secretary of State June 23, 1967

Amendment to Section 1106 approved at election June 3, 1969

Senate Concurrent Resolution No. 156

Cited: Resolution Chapter 276, Statutes 1969

Statutes 1969, Volume 2, page 3948

Filed with Secretary of State August 7, 1969

Amendments to Sections 402, 403, 404, 409, 604, 1000, 1217, 1600, 1601, 1603 and repeal of Sections 607 and 608 approved at election June 2, 1970

Senate Concurrent Resolution No. 98

Cited: Resolution Chapter 146, Statutes 1970

Statutes 1970, Volume 2, page 3693

Filed with Secretary of State July 30, 1970

Amendments to Sections 410, 503 and 1600 approved at election June 6, 1972

Senate Concurrent Resolution No. 72

Cited: Resolutions Chapter 77, Statutes 1972

Statutes 1972, Volume 2, page 3339

Filed with Secretary of State July 26, 1972

Amendment to Section 1104 approved at election November 7, 1972

Senate Concurrent Resolution No. 17

Cited: Resolution Chapter 18, Statutes 1973

Statutes 1973, Volume 9, page 2970

Filed with Secretary of State February 26, 1973

Amendment to Section 407 approved at election June 5, 1973

Senate Concurrent Resolution No. 69

Cited: Resolution Chapter 72, Statutes 1973

Statutes 1973, Volume 2, page 3140

Filed with Secretary of State June 26, 1973

Amendments to Sections 401, 402, 403, 410, 500, 601, 605, 805, 901, 1601 and 1603  
approved at election November 7, 1978

Filed with Secretary of State January 19, 1979

Charter Chapter No. 4

Amendments to Sections 407 and 1704, and addition of Sections 803.1, 805.1, 1001.1 and  
1111 approved at election November 4, 1980

Filed by Secretary of State December 23, 1980

Charter Chapter No. 31

Amendment to Section 1217 approved at election June 8, 1982

Filed with Secretary of State July 14, 1982,

Charter Chapter No. 18

Amendment to Section 1108 approved at election November 2, 1982

Filed with Secretary of State December 13, 1982

Charter Chapter No. 31

Amendment to Section 1108 approved at election June 5, 1984

Filed with Secretary of State July 2, 1984

Charter Chapter No. 10

Amendment to Section 609 approved at election November 6, 1984

Filed with Secretary of State December 12, 1984

Charter Chapter No. 32

Amendments to Sections 407, 411, 502, 700, 701, 800, 805, 805.1, 807, 900, 901, 1101, 1204  
and 1704, and addition of Sections 411.1, 805.2, 808 and 809 approved at election  
November 4, 1986

Filed with Secretary of State December 30, 1986

Charter Chapter No. 33.

Amendments to Sections 1000 and 1001 approved at election June 7, 1988

Filed with Secretary of State June 30, 1988,

Charter Chapter No. 7

Amendment to Section 1217 approved at election November 8, 1988

Filed with Secretary of State December 5, 1988

Charter Chapter No. 22



- Amendment to Section 1506 approved at election June 5, 1990  
Filed with Secretary of State July 2, 1990  
Charter Chapter No. 8, Statutes of 1990
- Amendments to Sections 402, 403, 1202, 1203 and 1217, and addition of Sections 204, 607 and 809.1 approved at election November 6, 1990  
Filed with Secretary of State December 20, 1990  
Charter Chapter No. 2, Statutes of 1991
- Amendments to Sections 411, 800, 900, 901, 1101 and 1704 and deletion of Sections 809 and 809.1 approved at election November 3, 1992  
Filed with Secretary of State December 4, 1992,  
Charter Chapter No. 20, Statutes of 1992
- Amendments to Sections 403, 1603, 1604, and the following sections (regarding gender neutrality) 405, 406, 409, 503, 704, 803, 803.1, 804, 904, 1000, 1001, 1001.1, 1101, 1104, 1105, 1108, 1202, 1208, 1210, 1213, 1215, 1217, 1504, 1505, 1604, and 1805, approved at election June 7, 1994  
Filed with Secretary of State July 11, 1994  
Charter Chapter No. 8, Statutes of 1994
- Amendments to Sections 401, 402, 404, 410, 500, 503, 1217, 1600, 1601 and 1603 approved at election November 8, 1994  
Filed with Secretary of State December 1, 1994  
Charter Chapter No. 15, Statutes of 1994
- Amendment to Section 1600 approved at election March 26, 1996  
Filed with Secretary of State May 2, 1996  
Charter Chapter No. 7, Statutes of 1996
- Amendments to Sections 411, 800, 900, 901, 1101 and 1704 and addition of Sections 809 and 809.1 approved at election November 5, 1996  
Filed with Secretary of State December 16, 1996  
Charter Chapter No. 27, Statutes of 1996
- Amendments to Sections 1001 and 1217 and repeal of Section 1104 approved at election November 3, 1998  
Filed with Secretary of State December 21, 1998  
Charter Chapter No. 24, Statutes of 1998
- Amendments to Sections 1202, 1203 and 1217 approved at election November 7, 2000  
Filed with Secretary of State April 16, 2001  
Charter Chapter No. 13, Statutes of 2001
- Amendment to Section 1217 approved at election March 2, 2004  
Filed with Secretary of State May 17, 2004  
Charter Chapter No. 4, Statutes of 2004

Addition of Section 1700.1 approved at election November 4, 2008  
Filed with the Secretary of State December 20, 2010  
Charter Chapter No. 20, Statutes of 2010

Amendment to Section 1111 and approved at election November 2, 2010  
Filed with the Secretary of State December 20, 2010  
Charter Chapter No. 21, Statutes of 2010

Amendment to Sections 1500 and 1501 and approved at election November 2, 2010  
Filed with the Secretary of State December 20, 2010  
Charter Chapter No. 22, Statutes of 2010

Addition of new Article XV-A (Sections 1501-A, 1502-A, 1503-A, 1504-A, 1505-A, 1506-A, 1507-A, 1508-A, 1509-A, 1510-A, 1511-A, 1512-A, 1513-A, 1514-A, and 1515-A) approved at election November 6, 2012  
Filed with the Secretary of State January 24, 2013  
Charter Chapter No. 5, Statutes of 2013

# Exhibit B

**RESOLUTION NO. 76158**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE REPEALING RESOLUTION NO. 76087 AND CALLING AND GIVING NOTICE OF, ON ITS OWN MOTION, THE SUBMISSION TO THE ELECTORS OF THE CITY OF SAN JOSE, AT A SPECIAL MUNICIPAL ELECTION TO BE HELD ON JUNE 5, 2012, A BALLOT MEASURE PROPOSAL TO AMEND THE SAN JOSE CITY CHARTER TO ADD A NEW ARTICLE XV-A TO REFORM CITY PENSIONS AND BENEFITS PROVIDED TO CURRENT EMPLOYEES AND ESTABLISH REDUCED PENSIONS AND BENEFITS FOR NEW EMPLOYEES AND TO PLACE OTHER LIMITATIONS ON PENSIONS AND BENEFITS**

**WHEREAS**, Charter Section 1600 authorizes the City Council to set the date for a Special Municipal Election; and

**WHEREAS**, the City Council adopted Resolution No. 76087 and approved a ballot measure for the June 5, 2012 election but directed the City Clerk not to submit the ballot measure to the Registrar of Voters to allow time for further negotiations on the ballot measure language; and

**WHEREAS**, the City Council now desires to submit to the electors of the City of San José at a Special Municipal Election a ballot measure proposal to amend the San José City Charter to add a new Article XV-A to reform pensions and benefits for current employees, to establish reduced pensions and benefits for new employees and to place other limitations on pensions and benefits; and

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:**

**SECTION 1.** Resolution No. 76087 is hereby repealed.

**SECTION 2.** A Special Municipal Election is hereby called and ordered to be held in the City of San José on June 5, 2012, for the purpose of voting on a ballot measure to

amend the San José City Charter to add a new Article XV-A to reform pensions and benefits for current employees and to establish different pensions and benefits for new employees and to place other limitations on pensions and benefits. The proposed City Charter amendment is attached to this Resolution as Exhibit A.

**SECTION 3.** The ballot measure will be placed on the ballot for the June 5, 2012 election in the following form:

**PENSION REFORM**

To protect essential services, including neighborhood police patrols, fire stations, libraries, community centers, streets and parks, shall the Charter be amended to reform retirement benefits of City employees and retirees by: increasing employees' contributions, establishing a voluntary reduced pension plan for current employees, establish pension cost and benefit limitations for new employees, reform disability retirements to prevent abuses, temporarily suspend retiree COLAs during emergencies, require voter approval for increases in future pension benefits?

YES	
NO	

**SECTION 4.** The City Council hereby requests the Board of Supervisors of the County of Santa Clara, California to permit the Registrar of Voters of Santa Clara County to render to the City of San José such services as the City Clerk of the City of San José may request relating to the conduct of the above-described Special Municipal Election with respect to the following matters:

Coordination of election precincts, polling places, voting booths, voting systems and election officers; Printing and mailing of voter pamphlets; Preparation of tabulation of result of votes cast.

**SECTION 5.** The City Council hereby requests that the Registrar of Voters of the County of Santa Clara consolidate the Special Municipal Election called and ordered to be held on June 5, 2012 with any other election that may be held on that date.

**SECTION 6.** The City Council hereby authorizes the Board of Supervisors of Santa Clara County, California to canvass the returns of the Special Municipal Election.

**SECTION 7.** The City Council hereby directs the City Clerk to reimburse the County of Santa Clara in full for any of the above-mentioned services which may be performed by the Registrar of Voters, upon presentation of a bill to the City, with funds already appropriated to the City Clerk for election purposes.

**SECTION 8.** The City Council hereby directs the City Clerk to take all actions necessary to facilitate the Special Municipal Election in the time frame specified herein and comply with provisions of the Elections Code of the State of California, City Charter, Ordinances, Resolutions and Policies with regard to the conduct of the Special Municipal Election.

**SECTION 9.** Pursuant to Section 12111 of the California Elections Code and Section 6061 of the California Government Code, the City Council hereby directs the City Clerk to (a) cause a synopsis of the proposed measure to be published in the San José Mercury News, a newspaper of general circulation within the City of San José; (b)

consolidate the Notice of Measure to be Voted with the Notice of Election into a single notice; (c) transmit a copy of the Measure to the City Attorney and cause the following statement to be printed in the Impartial analysis to be prepared by the City Attorney: "If you would like to read the full text of the measure, see [www.sanjoseca.gov/clerk/elections/Election.asp](http://www.sanjoseca.gov/clerk/elections/Election.asp) or call 408-535-1260 and a copy will be sent at no cost to you."; and (d) do all other things required by law to submit the specified measure above to the electors of the City of San José at the Special Municipal Election, including causing the full text of the proposed measure to be made available in the Office of the City Clerk at no cost and posted on the City Clerk's website.

**SECTION 10.** Pursuant to Sections 9282 and 9285 of the California Elections Code, the City Council hereby approves the submittal of arguments for and against the ballot measure, if any, and authorizes the Mayor to author and submit a ballot measure argument in favor of the ballot measure and also approves the submittal of rebuttal arguments in response to arguments for and against the ballot measure and authorizes any member or members of the City Council to author and submit a rebuttal, if any.

**SECTION 11.** The City Council hereby directs the City Clerk to transmit a copy of the measure qualifying for placement on the ballot to the City Attorney for preparation of an impartial analysis.

ADOPTED this 6th day of March, 2012, by the following vote:

AYES: CONSTANT, HERRERA, LICCARDO, NGUYEN,  
OLIVERIO, PYLE, ROCHA, REED.

NOES: CAMPOS, CHU, KALRA.

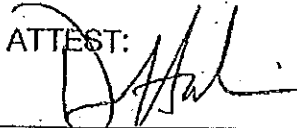
ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED  
Mayor

ATTEST:



DENNIS D. HAWKINS, CMC  
City Clerk

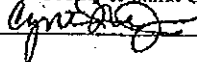
The foregoing instrument is  
a correct copy of the original  
on file in this office.

Attest:

TONI J. TABER

Acting City Clerk

Acting City Clerk of the City of San Jose  
County of Santa Clara, State of California

By  2/4/13, Deputy



February 8, 2012

76158

**ARTICLE XV-A  
RETIREMENT**

**EXHIBIT A**

**PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO  
ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS  
WHILE PRESERVING ESSENTIAL CITY SERVICES**

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as:  
*"The Sustainable Retirement Benefits and Compensation Act."*

**Section 1501-A: FINDINGS**

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter "Essential City Services").

The City's ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City's retirement plans is expected to continue to increase in the near future. In addition, the City's costs for other post employment benefits - primarily health benefits - are increasing. To adequately fund these costs, the City would be required to make additional cuts to Essential City Services.

By any measure, current and projected reductions in service levels are unacceptable, and will endanger the health, safety and well-being of the residents of San Jose.

February 8, 2012

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Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that post employment benefits be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that post employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

The Charter currently provides that the City retains the authority to amend or otherwise change any of its retirement plans, subject to other provisions of the Charter.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

#### **Section 1502-A: INTENT**

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned and accrued for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree or to take away any cost of living increases paid to retirees as of the effective date of the Act.

The City expressly retains its authority existing as of January 1, 2012, to amend, change or terminate any retirement or other post employment benefit program provided by the City pursuant to Charter Sections 1500 and 1503.

**Section 1503-A. Act Supersedes All Conflicting Provisions**

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, ordinances, resolutions or other enactments.

The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act. The goal is that such ordinances shall become effective no later than September 30, 2012.

**Section 1504-A.      Reservation of Voter Authority**

The voters expressly reserve the right to consider any change in matters related to pension and other post employment benefits. Neither the City Council, nor any arbitrator appointed pursuant to Charter Section 1111, shall have authority to agree to or provide any increase in pension and/or retiree healthcare benefits without voter approval, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

**Section 1505-A.      Reservation of Rights to City Council**

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this Act, to make any and all changes to retirement plans necessary to ensure the preservation of the tax status of the plans, and at any time, or from time to time, to amend or otherwise change any retirement plan or plans or establish new or different plan or plans for all or any officers or employees subject to the terms of this Act.

**Section 1506-A.      Current Employees**

(a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).

(b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but no more than 50% of the costs to

amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.

(c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.

(d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.

(e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

**Section 1507-A: One Time Voluntary Election Program ("VEP")**

The City Council shall adopt a Voluntary Election Program ("VEP") for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of

IRS approval. The VEP shall permit Current Employees a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if legally required) acknowledging that the employee irrevocably relinquishes his or her existing level of retirement benefits and has voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

(a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%) earned and accrued for service prior to the VEP's effective date; thus, the benefit accrual rate earned and accrued by individual employees for that prior service shall be preserved for payment at the time of retirement.

(b) Pension benefits under the VEP shall be based on the following limitations:

- (i) The accrual rate shall be 2.0% of "final compensation", hereinafter defined, per year of service for future years of service only.
- (ii) The maximum benefit shall remain the same as the maximum benefit for Current Employees.
- (iii) The current age of eligibility for service retirement under the existing plan as approved by the City

Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 57 for employees in the Police and Fire Department Retirement Plan and the age of 62 for employees in the Federated City Employees' Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

- (iv) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually on July 1 of each year starting July 1, 2017.
- (v) Cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.
- (vi) "Final compensation" shall mean the average annual pensionable pay of the highest three consecutive years of service.
- (vii) An employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time

worked (including paid leave, but not including overtime).

(c) The cost sharing for the VEP for current service or current service benefits ("Normal Cost") shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan.

(d) VEP Survivorship Benefits.

(i) Survivorship benefits for a death before retirement shall remain the same as the survivorship benefits for Current Employees in each plan.

(ii) Survivorship benefits for a spouse or domestic partner and/or child(ren) designated at the time of retirement for death after retirement shall be 50% of the pension benefit that the retiree was receiving. At the time of retirement, retirees can at their own cost elect additional survivorship benefits by taking an actuarially equivalent reduced benefit.

(e) VEP Disability Retirement Benefits.

(i) A service connected disability retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 50% of the average annual pensionable pay of the highest three consecutive years of service.



- (ii) A non-service connected disability retirement benefit shall be as follows:

The employee or former employee shall receive 2.0% times years of City Service (minimum 20% and maximum of 50%) based on the average annual pensionable pay of the highest three consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.

- (iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

**Section 1508-A: Future Employees – Limitation on Retirement Benefits – Tier 2**

To the extent not already enacted, the City shall adopt a retirement program for employees hired on or after the ordinance enacting Tier 2 is adopted. This retirement program – for new employees – shall be referred to as "Tier 2."

The Tier 2 program shall be limited as follows:

- (a) The program may be designed as a "hybrid plan" consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan. If the City provides a defined benefit plan, the City's cost of such plan shall not exceed 50% of the total cost of the Tier 2 defined benefit plan (both normal cost and unfunded liabilities). The City may contribute to a defined contribution or other retirement plan only when and to the extent

the total City contribution does not exceed 9%. If the City's share of a Tier 2 defined benefit plan is less than 9%, the City may, but shall not be required to, contribute the difference to a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose - San Francisco - Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.

(d) For any defined benefit plan, "final compensation" shall mean the average annual earned pay of the highest three consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation.

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 2% per year of service, not to exceed 65% of final compensation.

(f) For any defined benefit plan, an employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).

(g) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System or at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.

(h) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan subject to this section shall create a vested right to any benefit.

**Section 1509-A: Disability Retirements**

(a) To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

(b) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:

(i) An employee cannot do work that they did before; and

(ii) It is determined that

1) an employee in the Federated City Employees' Retirement System cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); or

2) an employee in the Police and Fire Department Retirement Plan cannot perform any other jobs described in the City's classification plan in the employee's department because of his or her medical condition(s); and

(iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.

(c) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

(d) The City may provide matching funds to obtain long term disability insurance for employees who do not qualify for a disability retirement but incur long term reductions in compensation as the result of work related injuries.

(e) The City shall not pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to the service connected disability retirement allowance to eliminate duplication of benefits for the same cause of disability, consistent with the current provisions in the Federated City Employees' Retirement System.

**Section 1510-A: Emergency Measures to Contain Retiree  
Cost of Living Adjustments**

If the City Council adopts a resolution declaring a fiscal and service level emergency, with a finding that it is necessary to suspend increases in cost of living payments to retirees the City may adopt the following emergency measures, applicable to retirees (current and future retirees employed as of the effective date of this Act):

(a) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees in whole or in part for up to five years. The City Council shall restore COLAs prospectively (in whole or in part), if it determines that the fiscal emergency has eased sufficiently to permit the City to provide essential services protecting the health and well-being of City residents while paying the cost of such COLAs.

(b) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current Employees who did not opt into the VEP and 1.5% for Current Employees who opted into the VEP and 1.5% for employees in Tier 2.

**Section 1511-A: Supplemental Payments to Retirees**

The Supplemental Retiree Benefit Reserve ("SRBR") shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets:

February 8, 2012

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**Section 1512-A: Retiree Healthcare**

- (a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.
- (b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.
- (c) **Low Cost Plan.** For purposes of retiree healthcare benefits, "low cost plan" shall be defined as the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System.

**Section 1513-A: Actuarial Soundness (for both pension and retiree healthcare plans)**

- (a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted pursuant to the Act shall: (i) be actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) be prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.
- (b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually

through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.

(c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:

- (i) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and
- (ii) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.

(d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:

- (i) the funding objectives and actuarial assumptions of the plans; and
- (ii) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

**Section 1514-A: Savings**

In the event Section 6 (b) is determined to be illegal, invalid or unenforceable as to Current Employees (using the definition in Section 6(a)), then, to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions. Any pay reductions implemented pursuant to this section shall not exceed 4% of compensation each year, capped at a maximum of 16% of pay.

**Section 1515-A: Severability**

(a) This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, sub-section, sentence or clause ("portion") of this Act is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this amendment. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of whether any one or more portions of the Act are found invalid. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect. In particular, if any portion of this Act is held invalid as to Current Retirees, this shall not affect the application to Current Employees. If any portion of this Act is held invalid as to Current Employees, this shall not affect the application to New Employees. This Act shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Act be interpreted or implemented by the City, courts and others in a manner that facilitates the purposes set forth herein.



( (b) If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective.

# Exhibit C

# 1975 FEDERATED EMPLOYEES RETIREMENT PLAN

§ 3.28.2340

Section 3.24.2300 or Section 3.24.2310 and who receive a retirement or survivorship allowance for the month of July 1986 shall automatically be enrolled in an eligible dental insurance plan as specified in this part.  
(Ord. 22261.)

## 3.24.2330 Costs of dental insurance.

The cost of providing dental insurance coverage as provided in this part shall be borne by and paid from the retirement fund.  
(Ord. 22261.)

## 3.24.2340 Eligible dental plan.

For the purposes of this part, members or their survivors may secure dental insurance coverage only from an eligible dental plan with which the city has entered into a contract for the provision of dental benefits as part of the city's benefits to city employees.  
(Ord. 22261.)

## Chapter 3.28

### 1975 FEDERATED EMPLOYEES RETIREMENT PLAN

#### Parts:

- 1 General Provisions and Definitions
- 2 Administration
- 3 Retirement Fund
- 4 Membership
- 5 Federated City Service
- 6 Member Contributions
- 7 City Contributions
- 8 Benefits Generally
- 9 Retirement for Service
- 10 Retirement for Disability
- 10A Reemployment of Disability Retiree

The foregoing instrument is  
a correct copy of the original  
on file in this office.

Attest:

TONI J. TABER

Acting City Clerk

Acting City Clerk of the City of San Jose,  
County of Santa Clara, State of California

*[Signature]* 2/4/13, Deputy

ool Allowance  
for Certain  
3.32 Police and  
retirement Plan  
Certain Retirees

retired Members

- 18 1987 Early Retirement Incentive Program
- 19 1992 Early Retirement Incentive Program
- 20 1993 Early Retirement Incentive Program
- 21 Reciprocity
- 22 Purchase of Prior Service Credit
- 23 Plan-Approved Domestic Relations Orders

## Part 1

### GENERAL PROVISIONS AND DEFINITIONS

#### Sections:

- 3.28.010 Plan established - Name - Scope.
- 3.28.020 Effective date of Chapter 3.28 provisions.
- 3.28.030 Definitions and construction of terms.
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Section 3.24.2300 or Section 3.24.2310 and who receive a retirement or survivorship allowance for the month of July 1986 shall automatically be enrolled in an eligible dental insurance plan as specified in this part.

(Ord. 22261.)

### 3.24.2330 Costs of dental insurance.

The cost of providing dental insurance coverage as provided in this part shall be borne by and paid from the retirement fund.

(Ord. 22261.)

### 3.24.2340 Eligible dental plan.

For the purposes of this part, members or their survivors may secure dental insurance coverage only from an eligible dental plan with which the city has entered into a contract for the provision of dental benefits as part of the city's benefits to city employees.

(Ord. 22261.)

## Chapter 3.28

### 1975 FEDERATED EMPLOYEES RETIREMENT PLAN

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#### Part 1

### GENERAL PROVISIONS AND DEFINITIONS

#### Sections:

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- 3.28.040 Use of masculine or feminine gender.
- 3.28.050 Overtime excluded in computing compensation.
- 3.28.060 Notices - Deemed effective when.
- 3.28.070 Termination of plan.

**3.28.010 Plan established - Name - Scope.**

- A. There is hereby established a retirement plan for all persons, hereinafter in this chapter specified, who may become members thereof pursuant to the provisions of this chapter. This plan shall be known as the "1975 Federated City Employees Retirement Plan," and includes all provisions of this Chapter 3.28.
- B. Notwithstanding any provision of the code to the contrary, the elements of the retirement plan as set out in Chapters 3.16, 3.20, 3.24 and 3.28 are components of a single retirement system known as the Federated City Employees Retirement Plan.
- C. Contributions made by the city and the members of the plan to the retirement fund described in Part 3 of this chapter shall be made for the purpose of distributing to such members or their beneficiaries the corpus and income of the fund in accordance with the terms of this plan.
- D. The Federated City Employees Retirement Plan is established as a qualified governmental defined benefit plan pursuant to Sections 401(a) and 414(d) of the Internal Revenue Code or such other provision of the Internal Revenue Code as applicable and applicable treasury regulations and other guidance of the internal revenue service. The board shall be authorized to adopt rules and regulations which are appropriate or necessary to maintain the qualified status of the plan.  
(Prior code § 2904.1000; Ords. 27838, 28885.)

**3.28.020 Effective date of Chapter 3.28 provisions.**

The effective date of this Chapter 3.28 and of this retirement plan is and shall be the first day of July, 1975, and the words "effective date of this chapter" or "effective date of this system", as used in this chapter,

shall be deemed to mean and refer to said first day of July, 1975.  
(Prior code § 2904.1029.)

**3.28.030 Definitions and construction of terms.**  
Unless the context otherwise requires, the definitions and general provisions set forth in this part govern the construction of this Chapter 3.28.  
(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

**3.28.030.01 "Actuarial equivalent".**  
"Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality tables adopted and the regular interest rate fixed by the board.  
(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

**3.28.030.02 "City".**  
"City" means the City of San José, a municipal corporation of the State of California.  
(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

**3.28.030.03 "Benefit".**  
"Benefit" means any retirement or survivorship allowance, or the refund of any accumulated contributions, or any money or right to which any person or estate may become entitled under the provisions of this system.  
(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

**3.28.030.04 "Chapter 3.24 retirement system".**  
"Chapter 3.24 retirement system", "Chapter 3.24 system" and "Chapter 3.24 plan" each mean the San José Federated City Employees Retirement System set forth in Chapter 3.24 of Title 3 of the San José Municipal Code.  
(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

**3.28.030.05 "Compensation".**  
A. "Compensation" means the remuneration paid in cash out of funds controlled by the city, plus the monetary value, as determined by the board, of living quarters, board, lodging, fuel, laundry and other advantages furnished to a member by the city in payment for the member's services or for time during which the member is excused from

work because of holidays, sick leave, vacation, compensating time off or leave of absence.

- B. "Compensation" shall include holiday in lieu pay.
- C. "Compensation" shall include incentive pay for successful completion, on an annual basis, of training in police anti-terrorist tactics as certified by the police department to the city finance department.
- D. "Compensation" shall not include the provision by the city of any medical or hospital service or care plan for its employees, any contribution by the city to meet the premium or charge for such plan, or any payment into any fund to provide any death, retirement or survivorship benefits for employees or their survivors, or to provide any health or welfare benefits for employees, or any payment by the city of the employee portion of any taxes imposed by federal law, or any payment made by the city to the federal or state government for any social security system or program.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353, 26918.)

### 3.28.030.06 "Compensation earnable".

- A. "Compensation earnable" by a member employed on a full-time basis means the average monthly (or biweekly, if compensation is paid on a biweekly basis by the city) compensation of a member, as determined by the board upon the basis of the average time put in by members in the same group or class of employment and at the same rate of pay.
- B. "Compensation earnable" by a member employed to render part-time service means the monthly (or biweekly, if compensation is paid biweekly) compensation actually paid to such member for such part-time service.
- C. The computation for time during which a member is absent shall be based on the compensation earnable by the member at the beginning of the absence, and the computation for time prior to entering federated city service shall be based on the compensation earnable by the member in the position first held by him or her in such service.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

### 3.28.030.07 "Continued service".

"Continued service", as applied to prior service, means all prior service, regardless of interruptions;

but, as to current service, it means employment in federated city service uninterrupted by a continuous absence of more than three years. The period for which a member receives credit for service under Section 3.28.630 while absent on military service shall be excluded in calculating such continuous absence. (Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

### 3.28.030.08 "Current service".

"Current service" means all city service rendered by a member on or after July 1, 1975, for which the member is entitled to credit under the provisions of this system.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

### 3.28.030.09 "Employee".

"Employee" means any person in the employ of the city, or who holds a city office, whose compensation, or at least that portion of that compensation which is provided by the city, is paid out of funds directly controlled by the city. The word "employee" shall be deemed to include the word "officer".

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

### 3.28.030.10 "Federated city service".

"Federated city service" means the service described and defined as such in Part 5 of this chapter.

(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

### 3.28.030.11 "Final compensation".

- A. For a member who separated from city service prior to July 1, 2001, "final compensation" means the highest average annual compensation earnable by the member during any period of three consecutive years of federated city service, including time prior to entering federated city service at the compensation earnable by the member in the position first held by him or her in such service as may be necessary to complete three consecutive years.
- B. For a member who separated from city service on or after July 1, 2001, "final compensation" means the highest average annual compensation earnable by the member during any period of twelve consecutive months of federated city service, including time prior to entering federated

city service at the compensation earnable by the member in the position first held by him or her in such service as may be necessary to complete twelve consecutive months; provided, however, that such final compensation shall not exceed one hundred eight percent of the second-highest average annual compensation earnable by the member during any twelve consecutive months, excluding all of the months used to determine the highest average annual compensation earnable; and provided further if the member has been subject to a mandatory reduction in paid working time, the calculation for compensation earnable shall include the compensation that would have been earnable had the member not been subject to a mandatory reduction in paid working time.

- C. For the purposes of this chapter, periods of service separated by breaks in service may be aggregated to constitute a period of three consecutive years or twelve consecutive months, as applicable, if the periods of service are consecutive except for such breaks. If a break in service did not exceed six months in duration, time included in the break and compensation earnable during such time shall be included in computation of final compensation. If a break in service exceeded six months in duration, the first six months thereof and the compensation earnable during those six months shall be included in computation of final compensation, but time included in the break which is in excess of six months and the compensation earnable during such excess time shall be excluded in computation of final compensation.  
(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353, 26828, 28603.)

**3.28.030.12 "Fiscal year".**

On and after July 1, 1975, the "fiscal year", for purposes of this chapter, is any year commencing on July 1st and ending on June 30th next following.  
(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

**3.28.030.13 "Funds directly controlled by the city".**

"Funds directly controlled by the city" include funds deposited in and disbursed from the city treasury in payment of compensation regardless of their source.  
(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

**3.28.030.14 "Holiday in lieu pay".**

"Holiday in lieu pay" means remuneration paid by the city to a member, as a percentage of the member's compensation, in lieu of holiday benefits provided to other city employees.  
(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

**3.28.030.15 "Member".**

"Member" means a person who becomes a member of this system pursuant to the provisions of Part 4 of this chapter whose membership shall not have been terminated pursuant to provisions of this chapter. No other persons are members.  
(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

**3.28.030.16 "Member's accumulated contributions".**

"Member's accumulated contributions" means the sum of a member's accumulated normal contributions and the member's accumulated prior service contributions, made by the member and standing to the credit of the member's individual account.  
(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

**3.28.030.17 "Member's accumulated normal contributions".**

"Member's accumulated normal contributions" means the sum of all normal contributions made by a member and standing to the credit of the member's individual account, plus regular interest thereon.  
(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

**3.28.030.18 "Member's accumulated prior service contributions".**

"Member's accumulated prior service contributions" means the sum of all prior service contributions made by a member and standing to the credit of the member's individual account, plus regular interest thereon.  
(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

**3.28.030.19 "Member's prior service contributions".**

"Member's prior service contributions" means contributions made by a member on account of city service rendered prior to July 1, 1975.  
(Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

**3.28.030.20 "Normal contributions".**

"Normal contributions" means contributions made by a member on account of current service at the normal rates of contribution fixed by the board. (Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

**3.28.030.21 "Part-time service".**

"Part-time service" means any service rendered by an employee of the city on a part-time basis. It also means and includes any service which is paid for on a part-time per diem, per hour or any basis other than annual, monthly or biweekly basis. "Part-time-employee" means any person employed by the city to render part-time service for the city. (Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353.)

**3.28.030.22 "Plan year".**

"Plan year" means July 1 to June 30. (Ord. 28885.)

**3.28.030.23 "Prior service".**

"Prior service" means all city service rendered by a member prior to July 1, 1975, for which the member is entitled to credit under the provisions of this system. (Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353, 28885.)

**3.28.030.24 "Regular interest".**

"Regular interest" means interest at the annual rate fixed by the board, compounded annually, plus such additional interest as the board may credit from year to year. (Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353, 28885.)

**3.28.030.25 "Retirement board".**

"Retirement board" or "board" means the board of administration referred to and specified in Section 3.28.100 of this chapter. (Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353, 28885.)

**3.28.030.26 "Retirement fund".**

"Retirement fund" or "fund" means the retirement fund specified in Section 3.28.300 of this chapter. (Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353, 28885.)

**3.28.030.27 "Retirement system".**

"Retirement system", "Retirement plan", "this system" or "this plan" means the 1975 federated city employees' retirement plan created by the provisions of this Chapter 3.28. (Prior code §§ 1001 - 1010, 1012 - 1025, 1027; Ords. 25368, 26353, 28885.)

**3.28.030.30 "Mandatory reduction in paid working time".**

"Mandatory reduction in paid working time" shall mean any time period during which a member's paid working time is mandatorily reduced, as calculated on an annual basis, to less than two thousand eighty hours, but not less than one thousand seven hundred thirty nine hours, pursuant to an agreement with a recognized employee organization that represents the member. (Ord. 28603.)

**3.28.040 Use of masculine or feminine gender.**

Whenever the context so requires, the masculine gender includes the feminine and the feminine includes the masculine. (Prior code § 2904.1028.)

**3.28.050 Overtime excluded in computing compensation.**

When the compensation of a member is a factor in any computation to be made under this chapter, there shall be excluded from such computation any compensation based on overtime put in by a member. For purposes of this chapter, overtime is the aggregate service performed by an employee in excess of the hours of work considered normal for employees on a full-time basis, and for which monetary compensation is paid. (Prior code § 2904.1011.)

**3.28.060 Notices - Deemed effective when.**

Any notice or order given by the retirement board to any person shall be effective upon the deposit of such notice or order in the United States mail, postage prepaid, addressed to such person at the address of such person as said address is shown on the records of the retirement board. A member may at any time file with said board a change of address. (Prior code § 2904.1026.)

**3.28.070 Termination of plan.**

A. Upon the termination of this plan or upon the complete discontinuance of contributions under



- the plan, the rights of each member, former member and beneficiary to benefits accrued to the date of such termination or discontinuance, to the extent then funded, shall be nonforfeitable.
- B. Upon the termination of this plan, the board shall perform all of the following:
1. Liquidate the assets of the retirement fund.
  2. Pay all of the accrued administrative expenses of the plan, including the expenses of liquidation.
  3. Determine the rights of each member, former member and beneficiary to benefits accrued to the date of termination, and ensure that all such benefits have been or are paid to the respective persons.
  4. Allocate any assets in the supplemental retiree benefit reserve established pursuant to Section 3.28.340 to the then existing retired members, survivors of members, and survivors of retired members using the distribution methodology most recently approved by the city council.
- C. Upon the termination of this plan and the satisfaction of all liabilities described in Subsection B, above, the board shall allocate any remaining assets of the retirement fund to the members of the plan on the basis of years of service and final compensation credited to the member at the time of termination of the plan.
- (Ord. 27838.)

## Part 2

### ADMINISTRATION

#### Sections:

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- 3.28.110 Retirement board - Powers and duties.
- 3.28.120 Retirement board - Accounts and recordkeeping required.
- 3.28.130 Retirement board - Prohibited financial transactions.
- 3.28.140 Retirement board - Authority to make and enforce rules and regulations.
- 3.28.150 Retirement board - Authority to secure medical service and advice.
- 3.28.155 Authority to secure other contractual services.

- 3.28.160 Actuarial investigations - Determination of rate of interest.
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- 3.28.180 Authority to determine employee status and benefits.
- 3.28.190 Change in employee status - Board notification required.
- 3.28.200 Authority to adopt tables, revise contribution rates.
- 3.28.210 Determination of age, service and compensation when records are inadequate.
- 3.28.230 Adjustment of contributions and payments.
- 3.28.240 Hearings authorized when.
- 3.28.250 Power to administer oaths, issue subpoenas.
- 3.28.260 Retirement board - Annual report.
- 3.28.270 Direct transfers of eligible rollover distributions.
- 3.28.275 Review of proposed amendments.
- 3.28.280 Direct trustee-to-trustee transfers.

#### 3.28.100 Retirement board - Designated.

The retirement system established by the provisions of this Chapter 3.28, and the retirement fund provided for in this chapter, shall be managed, administered and controlled by that certain board of administration entitled "board of administration for federated city employees retirement system" which has been established by and pursuant to the provisions of Sections 2.08.1000 through 2.08.1090, inclusive, of the San José Municipal Code.

(Prior code § 2904.1050.)

#### 3.28.110 Retirement board - Powers and duties.

The retirement board shall have all the powers and duties given it by the provisions of this Chapter 3.28, including but not limited to, the powers and duties specified in this Part 2. Notwithstanding anything in this part to the contrary, the retirement board shall not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.

(Prior code § 2904.1051; Ord. 28885.)

#### 3.28.120 Retirement board - Accounts and recordkeeping required.

- A. The retirement board shall keep or cause to be kept any and all records and accounts reasonably

necessary for the management, administration or control of this retirement system, including but not limited to records of all contributions made by any and all members of the system or made by the city, and records of all moneys in the retirement fund and of the investment and distribution of such moneys.

- B. In particular, the board shall keep such records and accounts as may be necessary to show:
1. The total accumulated normal contributions of members;
  2. The total accumulated prior service contributions of members;
  3. The accumulated contributions of the city held for the benefit of members on account of current service;
  4. All other accumulated contributions of the city, which shall include the amounts available to meet the obligation of the city on account of prior service of members.
  5. The names of all persons receiving benefits under the retirement system, the nature of such benefits and the amounts paid to each person therefor.

(Prior code § 2904.1060; Ord. 25993.)

### 3.28.130 Retirement board - Prohibited financial transactions.

A board member or employee of the board shall not, directly or indirectly:

- A. Have any interest in the making of any investment, or in the gains or profits accruing therefrom;
- B. For himself, or as an agent or partner of others, borrow any funds or deposits of this system, nor use such funds or deposits in any manner except to make such current and necessary payments as are authorized by the board;
- C. Become an endorser, surety or obligor on investments by the board.

(Prior code § 2904.1065.)

### 3.28.140 Retirement board - Authority to make and enforce rules and regulations.

Subject to the provisions of this chapter and to all applicable provisions of the Charter of the City of San José, the board may make and enforce reasonable rules and regulations for the administration, management and control of the provisions of this chapter and of the retirement system and fund provided for herein; and each member of this system, each person retired hereunder and each person or

estate entitled to or receiving any benefits under the provisions of this chapter is and shall be subject to the provisions of this chapter and to said rules and regulations.

(Prior code § 2904.1052.)

### 3.28.150 Retirement board - Authority to secure medical service and advice.

The board may enter into contractual arrangements for such medical service and advice, and may secure and pay reasonable compensation for such independent medical examiners, as the board deems necessary to discharge its duties respecting matters involving disability or death or both. Such contracts for medical services shall be entered into in the name of the board of administration for the federated city employees retirement system.

(Prior code § 2904.1054; Ord. 25092.)

### 3.28.155 Authority to secure other contractual services.

- A. In addition to the authority to enter into contractual arrangements for medical services as provided in Section 3.28.150 and the authority to enter into contractual arrangements for investment related services as provided in Part 3 of this chapter, the board is authorized to select, enter into contractual arrangements with, and pay reasonable compensation to persons to perform the following services for the board:

1. Actuarial services.
2. Auditing services.
3. Investment manager search services.
4. Investment performance evaluation services.
5. Proxy voting services.
6. Other consultant services which the board deems necessary to carry out its duties and responsibilities under this retirement plan.

- B. The contracts described in subsection A. shall be entered into in the name of the board of administration for the federated city employees retirement system.

(Ords. 24696, 25092.)

### 3.28.160 Actuarial investigations - Determination of rate of interest.

The board shall keep in convenient form such data as is necessary for the actuarial evaluation of this system. The board shall cause an actuarial investigation to be made from time to time and as often as it may deem such to be reasonably necessary to keep the plan actuarially sound, but not less

frequently than once each five years, commencing from and after July 1, 1975. The actuarial investigation shall consist of a report as to the mortality; service and compensation experience of members and persons receiving benefits, an actuarial valuation of the assets and liabilities of this system, and such other actuarial investigations as may be relevant to and for the benefit of the system. From time to time the board shall determine the rate of interest being earned on the retirement fund. (Prior code § 2904.1055.)

**3.28.170 Financial reports.**

The board shall cause to be issued, as of the date of the investigation and valuation made pursuant to Section 3.28.160, a financial statement showing an actuarial valuation of the assets and liabilities of this system. A statement as to the accumulated cash and securities in the retirement fund as certified by the auditor shall also be submitted at the same time. (Prior code § 2904.1061.)

**3.28.180 Authority to determine employee status and benefits.**

The board, subject to the provisions of this chapter, shall determine who are employees of the city eligible for membership in this retirement system, and is the sole judge of the conditions under which persons may be admitted to and received or continue to receive benefits under this system, and shall determine, modify or terminate benefits for service or disability or death or any other benefits provided for in this chapter. (Prior code § 2904.1053.)

**3.28.190 Change in employee status - Board notification required.**

The director of personnel shall give to the board such notice as it may require of the change of status of any member, resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal or death, and other pertinent information. (Prior code § 2904.1063.)

**3.28.200 Authority to adopt tables, revise contribution rates.**

Upon the basis of any or all of such investigations, valuations and determinations, the board shall adopt such mortality, service and other tables, actuarially assumed annual rate of return, and other actuarial assumptions as it may deem reasonably necessary, and, subject to such limitations as are set

forth elsewhere in this chapter, it shall fix and from time to time make such revisions or changes in the rates of contribution required of members and of the city as it may determine reasonably necessary to provide the benefits provided for by this retirement plan.

(Prior code § 2904.1056; Ord. 27436.)

**3.28.210 Determination of age, service and compensation when records are inadequate.**

- A. Whenever it is impractical for the retirement board to determine from the records of the city and from other evidence before it the length of service, the compensation or the age of any member in this retirement system, it may estimate for the purposes hereof such length of service, compensation or age. Each employee shall file with the board such information respecting his age, length of service or compensation or any other information which may affect his status as the board may require.
- B. If there is a disagreement between any member and the board with respect to the length of service, compensation or age of any member, or if any member refuses or fails to give the board a statement of his city service, compensation or age or other information requested by the board, the board shall hold a hearing and upon the basis of available testimony and available records determine such length of service, compensation or age.

(Prior code § 2904.1058.)

**3.28.230 Adjustment of contributions and payments.**

If more or less than the correct amount of contribution required of members or the city is paid, proper adjustment shall be made in connection with subsequent payments, or such adjustments may be made by direct cash payments between the member or the city and the board. Adjustments to correct any other errors in payments to or by the board may be made in the same manner.

(Prior code § 2904.1064.)

**3.28.240 Hearings authorized when.**

- A. The board in its discretion may hold hearings for the purpose of determining any question presented to it involving any right, benefit or obligation of any person under this chapter. Any applicant for any benefits may file an application

for rehearing of his application for benefits within thirty days after written notice of the determination of the retirement board has been sent by mail to the applicant or his attorney of record, upon any of the following grounds:

1. That the retirement board acted without and in excess of its powers;
2. That the order, decision or award was procured by fraud;
3. That the evidence does not justify the determination of the retirement board;
4. That the applicant has discovered new evidence material to him which he could not with reasonable diligence have discovered or procured at the hearing.

B. The determination of the retirement board on any said application for rehearing shall be made within sixty days from and after the date of filing of said application.

(Prior code § 2904.1059.)

### 3.28.250 Power to administer oaths, issue subpoenas.

The retirement board shall have the power to administer or require oaths and affirmations, to issue subpoenas to compel the attendance of witnesses or the production of books, papers and documents, and to take and hear testimony concerning any matter pending before the board. If any person so subpoenaed neglects or refuses to appear or produce any book, paper or document as required by said subpoena, or shall refuse to testify before the board or answer any questions which a majority of the board decides to be proper and pertinent, the board shall have the power to initiate proceedings in the proper court to have such person declared guilty of contempt. The chief of police shall, on request of the board, have such subpoenas served by a police officer or officers.

(Prior code § 2904.1066.)

### 3.28.260 Retirement board - Annual report.

Within ninety days after the end of each fiscal year, or if later, within thirty days after the submission to the city council of an audited annual fiscal report of the retirement system's funds required by ordinance, the board shall submit to the city council and city manager an annual report for such preceding fiscal year. The report shall contain a statement of the board's work for such period, and shall show all receipts and disbursements and the balance remaining in the retirement fund after such

payments. The report may contain recommendations for or against changes in the retirement system. (Prior code § 2904.1062; Ord. 18767 § 4, 1977, 25993.)

### 3.28.270 Direct transfers of eligible rollover distributions.

- A. If, under the provisions of this chapter, a person becomes entitled to a distribution which is an eligible rollover distribution, the person may elect to have the distribution or any portion thereof paid directly to an eligible retirement plan specified by the person.
- B. The election made pursuant to this section shall be in accordance with the terms and conditions established by the board.
- C. Upon the exercise of the election by a person pursuant to this section, the distribution from the retirement fund of the amount designated by the person, once distributable under the provisions of this chapter, shall be made in the form of a direct transfer to the eligible retirement plan so specified.
- D. For the purposes of this section, "eligible rollover distribution" means a distribution from the retirement fund which constitutes an eligible rollover distribution within the meaning of Section 401(a)(31)(C) of the Internal Revenue Code, consisting of any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution which the internal revenue service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of Section 415 of the Internal Revenue Code or any distribution that is reasonably expected to total less than two hundred dollars during the year. Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover

distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only: (i) to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code; (ii) on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or (iii) on or after January 1, 2008, to a Roth IRA described in Section 408A of the Internal Revenue Code. Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. For purposes of this Section 3.36.480, "spouse" has the meaning set forth in federal law.

E. For purposes of this section, "eligible retirement plan" means a plan which constitutes an eligible retirement plan within the meaning of Section 401(a)(31)(D) of the Internal Revenue Code, consisting of one or more of the following:

1. An individual retirement account described in Section 408(a) of the Internal Revenue Code;
2. An individual retirement annuity described in Section 408(b) of the Internal Revenue Code;
3. An annuity plan described in Section 403(a) of the Internal Revenue Code;
4. A qualified trust described in Section 401(a) of the Internal Revenue Code;
5. Effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code;
6. Effective January 1, 2002, a plan eligible under Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a

political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement plan; or

7. Effective January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.

F. For purposes of this section, "distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. Effective July 1, 2010, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(B) of the Internal Revenue Code. However, a nonspouse beneficiary may only make a direct rollover to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity shall be treated as an "inherited" individual retirement account or annuity.

G. If on or after March 28, 2005, the member is to receive a distribution of an eligible rollover distribution, with a present value greater than one thousand dollars, and if a member does not elect to have such distribution paid directly to an eligible retirement plan specified by member in a direct rollover or to receive the distribution directly, then the system shall pay the distribution in a direct rollover to an individual retirement plan designated by the board in accordance with Section 401(a)(31)(B) of the Internal Revenue Code and IRS Notice 2005-5.

(Ords. 24814, 28885.)

### 3.28.275 Review of proposed amendments.

A. Except as provided in subsection B., prior to the adoption of any ordinance amending the Federated City Employees Retirement System, a copy of the proposed ordinance shall be provided to the board for the board's review and recommendation.

1. The board may, but is not required to, submit a report or recommendation on the proposed amendment to the city council.
2. If the board declines or fails to submit a report or recommendation on a proposed amendment within sixty days of receipt of the proposed ordinance by the secretary to

- the board, the city council may proceed to adopt or not adopt the ordinance without first receiving a report or recommendation from the board.
3. Nothing in paragraph 2. shall be deemed to preclude the board from thereafter submitting a report or recommendation to the city council.
- B. In any case where the city council finds that there is a need to adopt an ordinance amending the system within a time period which would not allow for a sixty-day review period, the council may act on the ordinance without first submitting it to the board, and the following procedures shall apply:
1. At the time the council passes the ordinance for publication of title or, in the case of an urgency ordinance, at the time the council adopts the ordinance, the council shall refer the ordinance to the board for study and consideration.
  2. Following its study, the board may submit to the council a recommendation that the council take one or more of the following actions:
    - a. Repeal the ordinance.
    - b. Readopt the provisions of the ordinance with such amendments, additions or changes, if any, as the board may wish to recommend.
    - c. Make such other changes or provisions as the board may recommend.
  3. Upon receipt of the board's recommendation, the council may implement or disapprove the recommendation.
- (Ords. 24921, 24979.)

### 3.28.280 Direct trustee-to-trustee transfers.

- A. If a member of this plan becomes eligible to purchase permissive service credit in this plan and elects to make such purchase through a lump sum deposit, the plan will accept a direct trustee-to-trustee transfer of funds from an eligible deferred compensation plan as defined in Section 457(b) of the Internal Revenue Code if such transfer is:
1. For the purchase of permissive service credit as defined in Section 415(n)(3)(A) of the Internal Revenue Code; or
  2. A redeposit of withdrawn contributions pursuant to Section 3.28.790.

- B. If required by the provisions of the Internal Revenue Code or the regulations promulgated under the Internal Revenue Code, the plan will account separately for funds received through a direct trustee-to-trustee transfer from an eligible deferred compensation plan.
- (Ord. 26830.)

## Part 3

### RETIREMENT FUND

#### Sections:

- |          |   |
|----------|---|
| 3.28.300 | Establishment - Name - Composition.                       |
| 3.28.310 | Retirement board administration and investment authority. |
| 3.28.320 | Custodian of retirement fund - Payments.                  |
| 3.28.330 | Deposit of funds.   |
| 3.28.340 | Disposition of earnings.                                  |
| 3.28.350 | Investment of funds - Conditions and limitations.         |
| 3.28.355 | Investment of funds - Delegation of authority.            |
| 3.28.360 | Security loan agreements.                                 |
| 3.28.365 | Investments - Real estate.                                |
| 3.28.370 | Redeposit of unclaimed payments.                          |
| 3.28.375 | Investment counseling - Restrictions.                     |
| 3.28.380 | Separate medical benefits account.                        |
| 3.28.385 | Contribution rates for medical and dental benefits.       |

### 3.28.300 Establishment - Name - Composition.

- A. In order to continue in force and make effectual pensions and retirements already existing or that may be granted in the future in favor of members of the retirement plan heretofore established pursuant to the provisions of Chapter 3.24 of this Code, and in order to carry out the provisions of this chapter, the retirement fund heretofore continued in existence by the provisions of Chapter 3.24 and specifically by the provisions of Section 3.24.300 of the San José Municipal Code, is hereby continued in existence and is hereby made a combined common fund for the component of the retirement system established

by this chapter and for the component of the retirement system established by Chapter 3.24, and for the components of any and all other retirement systems with which it has heretofore been combined. All income and other moneys which are required pursuant to the provisions of this chapter to be paid to this retirement system or into the retirement fund shall be paid into and held in said fund; and all benefits or allowances payable to any member or person under this retirement system shall be paid from said fund. Said fund is known as and shall continue to be known as the "San José Federated City Employees Retirement Fund".

- B. At no time prior to the satisfaction of all liabilities with respect to members of this plan and their beneficiaries shall any part of the corpus or income of the retirement fund be used for, or diverted to, purposes other than for the exclusive benefit of the members and their beneficiaries.

(Prior code § 2904.1100; Ords. 25092, 27838.)

**3.28.310 Retirement board administration and investment authority.**

The board has the exclusive control of the administration and investment of the retirement fund. (Prior code § 2904.1101; Ord. 25092.)

**3.28.320 Custodian of retirement fund - Payments.**

- A. Except as provided in subsection B., the city director of finance is the custodian of the retirement fund, subject to the exclusive control of the board as to administration and investment. All payments from the fund shall be made in the manner required for the disbursement of other public funds, but only upon authorization of the board.

- B. The board may enter into contractual arrangements with California banks or with national banking associations to provide master custody services with respect to the assets of the retirement fund. Such contracts shall be entered into in the name of the board of administration for the federated city employees retirement system:

(Prior code § 2904.1102; Ord. 25092.)

**3.28.330 Deposit of funds.**

The board shall deposit, to the credit of the retirement fund, all amounts received by it under this

chapter in the city treasury or in such custodial accounts as are established with the custodian bank. (Prior code § 2904.1104; Ord. 25092)

**3.28.340 Disposition of earnings.**

- A. Definitions. For the purpose of this Section 3.28.340, the terms listed herein shall have the following meanings:

1. "Income account" means the account established in the general reserve pursuant to subsection B. below.
2. "Interest crediting rate" means the interest rate determined by the Board for crediting the employee contribution reserve.

- B. Retirement fund reserves. There shall be established in the retirement fund the following reserves:

1. The employee contribution reserve.
  - a. The board shall credit to the employee contribution reserve all contributions made by members of the retirement system and all interest payable pursuant to subsection C. below.
  - b. Moneys in the employee contribution reserve shall be available for the payment of benefits and for the return of contributions pursuant to Section 3.28.780.
2. The supplemental retiree benefit reserve.
  - a. The board shall credit to the supplemental retiree benefit reserve all interest payable pursuant to subsection C. below and that portion of the excess earnings determined pursuant to subsection D. below.
  - b. Distributions from the supplemental retiree benefit reserve shall be made in accordance with subsection E. below.
3. The general reserve.
  - a. The board shall establish an income account and shall credit the income account with all rents, interest, dividends, realized gains and losses, unrealized gains and losses, and all other income other than employer contributions, received during the fiscal year. The board shall pay from the income account all expenses and administrative costs as they are incurred.
  - b. The board shall credit to the general reserve all contributions made by the

- city, all interest payable pursuant to subsection C. below, and that portion of the excess earnings determined pursuant to subsection D. below.
- c. Moneys in the general reserve shall be available for the payment of benefits and for the payment of the expenses and administrative costs of the retirement system.
  4. Such other reserves as the board may determine from time to time.
- C. Credit to contributions and reserves. All interest credited pursuant to this subsection C. shall be deducted from the income account.
1. Interest shall be credited to the employee contribution reserve on a semi-annual basis, or more frequently if authorized by the board, at the interest crediting rate.
  2. Interest shall be credited to the supplemental retiree benefit reserve at the actuarially assumed annual rate of return adopted by the board pursuant to Section 3.28.200 or at the actual rate of return earned by the retirement fund during the applicable fiscal year, whichever is lower. Interest credited to the supplemental retiree benefit reserve shall be calculated as though the transfer of excess earnings required by subsection D. had been made on July 1 of the calendar year, regardless of the actual date such transfer is made.
  3. Interest shall be credited to the general reserve as follows:
    - a. Interest at the actuarially assumed annual rate of return adopted by the board pursuant to Section 3.28.200 or at the actual rate of return earned by the retirement fund during the applicable fiscal year, whichever is lower; plus
    - b. Interest calculated as the difference between (i) the interest that would have been credited to the employee contribution reserve had the employee contribution reserve been credited at the actuarially assumed annual rate of return adopted by the board pursuant to Section 3.28.200 or at the actual rate of return earned by the retirement fund during the applicable fiscal year, whichever is lower, and (ii) the interest actually credited to the employee contribution reserve pursuant to subsection C.1. above; provided, however, that there shall be no offset to the general reserve in any case where this difference is a negative number.
  4. Interest shall be credited to any other reserves established by the board in the same manner as interest is credited to the supplemental retiree benefit reserve.
- D. Excess earnings.
1. Within ninety days from and after receipt of audit reports for each fiscal year, the board shall determine the balance remaining in the income account after crediting of interest as provided in subsection C. above, and after payment of administrative costs and expenses of the retirement system for the applicable fiscal year.
  2. If the balance remaining in the income account is greater than zero, the board shall by written resolution declare that balance to be the excess earnings for the applicable fiscal year, shall transfer ten percent of the excess earnings to the supplemental retiree benefit reserve, and shall transfer the remaining ninety percent of the excess earnings to the general reserve. If the balance remaining in the income account is less than or equal to zero, the board by written resolution shall declare that there are no excess earnings and shall adjust the general reserve to reflect any negative balance in the income account so that the balance in the income account is zero as of the beginning of each fiscal year.
- E. Distributions from the supplemental retiree benefit reserve.
1. The supplemental retiree benefit reserve shall be used only for the benefit of retired members, survivors of members, and survivors of retired members.
  2. Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding the distribution, if any, of the supplemental retiree benefit reserve to retired members, survivors of members, and survivors of retired members. The city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the



supplemental retiree benefit reserve to said persons.

(Prior code § 2904.1103; Ords. 20596, 22263, 22486, 23087, 25092, 27436.)

### 3.28.350 Investment of funds - Conditions and limitations.

The board shall invest and reinvest the moneys in the retirement fund in accordance with the following standards:

- A. The assets of the retirement plan are trust funds and shall be held for the exclusive purposes of providing benefits to members of the plan and their beneficiaries and defraying reasonable expenses of administering the plan. The assets of the retirement plan must not revert, and no contributions shall be permitted to be returned to the employers, except as permitted by Revenue Ruling 91-4.
- B. The board shall discharge its duties with respect to the plan solely in the interest of, and for the exclusive purposes of providing benefits to, members of the plan and their beneficiaries, maintaining the actuarial soundness of the plan, and defraying reasonable expenses of administering the plan. The board's duty to the members and their beneficiaries shall take precedence over any other duty.
- C. The board shall discharge its duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of like character and with like aims.
- D. The board shall diversify the investments of the plan so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances, it is clearly prudent not to do so.
- E. The retirement plan may participate under Section 401(a)(24) of the Internal Revenue Code in a qualified group trust that meets the requirements of Section 401(a) of the Internal Revenue Code in accordance with Revenue Ruling 81-100, as amended by Revenue Ruling 2004-67.

(Ords. 25092, 28885.)

### 3.28.355 Investment of funds - Delegation of authority.

Without limiting the authority of the board itself to invest and reinvest the moneys of the retirement fund as provided in Section 3.28.350, the board may

adopt an investment resolution or resolutions containing detailed guidelines, consistent with Section 3.28.350. While the resolution or resolutions are in effect, investments consistent with such guidelines may be made by an officer of the board, an officer or employee of the city, or a qualified investment advisor who has entered into a contractual arrangement pursuant to Section 3.28.375, provided that such officer, employee or advisor has been delegated such authority by the board and such officer, employee or advisor has been designated by name in the investment resolution or resolutions. Any transactions made pursuant to the foregoing provisions of this section shall be reported monthly to the board by the person or persons to whom the board has delegated such authority.

(Ord. 25092.)

### 3.28.360 Security loan agreements.

- A. The retirement board may enter into contractual arrangements with broker-dealers and with banks for such broker-dealers or banks to provide security lending services pursuant to security loan agreements on such conditions, consistent with this section, as the board may determine.
- B. For the purposes of this section, "security loan agreement" and "marketable securities" shall be defined as follows:
  1. "Security loan agreement" means a written contract whereby a legal owner, the lender, agrees to lend specific marketable corporate or government securities for a period not to exceed one year. The lender retains the right to collect from the borrower all dividends, interest, premiums, rights, and any other distributions to which the lender would otherwise have been entitled. The lender waives the right to vote the securities during the term of the loan.
  2. "Marketable securities" means securities that are freely traded on recognized exchanges or market places.
- C. Any contractual arrangements entered into pursuant to this section shall require all of the following:
  1. The lender may terminate the security loan agreement upon not more than five business days' notice as agreed and the borrower may terminate the security loan agreement upon not less than two business days' notice as agreed.
  2. The borrower shall provide collateral to the lender in a form approved by the board, and

in an amount equal to at least one hundred two percent of the market value of the loaned securities as agreed.

3. Daily monitoring of the market value of the loaned securities.
4. Payment by the borrower of additional collateral on a daily basis, or at such times as the value of the loaned securities increases, to agreed-upon ratios, but in no event shall the amount of the collateral be less than the market value of the loaned securities.
5. Maintenance of detailed records of all security loans.
6. Development of controls and reports to monitor the conduct of the transactions.
7. Publication of the net results of the security loan transactions separate from the results of other investment activities.

(Ords. 24690, 25092.)

### 3.28.365 Investments - Real estate.

#### A. The board may:

1. Acquire, hold for investment or sell commercial, industrial and residential real estate, and real estate related debt instruments in the following forms: in its own name or in common ownership with the police and fire department retirement plan or through a title holding corporation or trust satisfying the requirements of Internal Revenue Code Section 501(c)(25);
2. Lease real property owned by the board for any lawful purpose and for terms which may extend beyond the duration of this retirement system;
3. Create restrictions and easements affecting the real property owned by the board; and
4. Exercise all other rights, privileges and powers which an owner of real property would have, unless otherwise prohibited by the terms of this retirement plan or by other applicable law.

#### B. The board shall take title as follows:

1. Title to all commercial, industrial and residential real estate and all real estate related debt instruments acquired by the board on behalf of this retirement system shall be taken and held in one of the following forms: directly by the board of administration in the name of board of administration as trustee for the federated

city employees retirement fund, or through a title holding corporation or trust satisfying the requirements of Internal Revenue Code Section 501(c)(25).

2. Title to all commercial, industrial and residential real estate and all real estate related debt instruments acquired by the board on behalf of this retirement plan to be held in common ownership with the police and fire department retirement plan shall be taken and held in the following name: board of administration as trustee for the federated city employees retirement fund, as to an undivided specified percent interest, and the board of administration, as trustee for the police and fire department retirement fund, as to an undivided specified percent interest, together as tenants in common. The percent interests to be specified in the title shall be determined by the boards of administration.

C: For the purposes of this Section 3.28.365, a title holding corporation or trust satisfying the requirements of Internal Revenue Code Section 501(c)(25) may be such a corporation or trust established by the board.

(Ords. 25092, 25994.)

### 3.28.370 Redeposit of unclaimed payments.

Notwithstanding any provision in this chapter or any other ordinance to the contrary, whenever any check drawn against the retirement fund in payment of accumulated contributions or for any benefit remains unclaimed or the claimant cannot be found, the amount of such check shall be redeposited in the retirement fund and held for the claimant without further accumulation of interest, and such redeposit shall not operate to reinstate the membership of the claimant in this system. If such proceeds, whether heretofore or hereafter redeposited, are not claimed within four years after the date of redeposit, they shall revert to and become a part of the accumulated contributions of the city, held in the retirement fund to meet the liabilities of the city on account of current services. The board may at any time after reversion of proceeds to the city, and upon receipt of proper information satisfactory to it, return such proceeds so held for the city to the credit of the claimant, to be administered in the manner provided under this system.

(Prior code § 2904.1106; Ord. 25092.)

**3.28.375 Investment counseling - Restrictions.**

- A. The board may enter into contractual arrangements with any person or persons or association or associations, who meet the requirements of subsection B. or C., to provide counsel to the board with respect to the board's policies of investing and reinvesting of moneys in the retirement fund. Such contracts shall be entered into in the name of the board of administration for the federated city employees retirement system.
- B. Any person or association who provides services to the board with regard to financial securities:
  - 1. Shall be a person or association whose principal business consists of investment counseling services; and
  - 2. Shall be registered as an investment adviser under such laws as may require such registration.
- C. With respect to real estate advisors, the board shall enter into contractual arrangements only with persons or associations whose principal officers are engaged in the business of advising and evaluating commercial, industrial or residential real estate investments, mortgage banking or property management, and which are duly licensed to perform real estate advisor services in the jurisdiction where the real property is located.

(Prior code § 2904.1107; Ords. 21606, 25092, 25641.)

**3.28.380 Separate medical benefits account.**

- A. There is hereby established as of July 1, 1995, the medical benefits account as a separate account within the retirement fund. The medical benefits account shall be maintained in compliance with Internal Revenue Code Section 401(h) and the regulations promulgated thereunder. Monies in the medical benefits account may be commingled with other monies in the retirement fund solely for the purposes of investment.
- B. All contributions made to the retirement fund to provide for the payment of benefits for sickness, accident, hospitalization, dental or medical expenses of persons receiving monthly allowances under the provisions of this plan, and all earnings and interest attributable to such contributions to the retirement fund, shall be placed in the medical benefits account. All contributions to the medical benefits account shall

be reasonable and ascertainable. At the time the city makes a contribution to the medical benefits account, the city shall designate in writing that such contribution is solely for the medical benefits account.

- C. Contributions to provide for the payment of benefits for sickness, accident, hospitalization, dental or medical expenses of persons receiving monthly allowances under the provisions of this plan, and earnings and interest attributable to such contributions may be made to the medical benefits account or to the trust established by Chapter 3.52.
- D. All funds in the medical benefits account shall be used only for the payment of benefits and expenses allowed under Internal Revenue Code Section 401(h) and the regulations promulgated thereunder. The medical benefits account shall be used to provide medical and dental benefits in accordance with Parts 16 and 17 of this chapter. Prior to the satisfaction of all liabilities under this plan to provide such benefits, no funds in the medical benefits account shall be used for, or diverted to, any other purpose.
- E. All benefits provided through the medical benefits account, plus any life insurance protection provided under the plan, shall be subordinate to the retirement and survivors' benefits provided by the plan. Accordingly, at all times after the date on which the medical benefits account is established, the aggregate of the city's contributions to the medical benefits account shall not exceed twenty-five percent of its total aggregate contributions to the plan (other than contributions to fund prior service). For the purpose of this limitation, city contributions include any contributions which are "picked-up" pursuant to Internal Revenue Code Section 414(h).
- F. Upon the satisfaction of all liabilities under this plan to provide the benefits described in this section, any amount remaining in the medical benefits account shall be paid to the city.
- G. In the event that a member's interest in the medical benefits account is forfeited prior to the termination of the plan, an amount equal to the forfeiture shall be applied as soon as practicable to reduce the city contributions, if any, to the medical benefits account.
- H. City and member contributions to the medical benefits account shall be made on the same periodic basis as city and member contributions

are made to the retirement fund. City contributions and member contributions to the medical benefits account may be paid on different payment schedules.

(Ords. 27838, 28332, 28885, 28914.)

### 3.28.385 Contribution rates for medical and dental benefits.

Contribution rates to fund the benefits for sickness, accident, hospitalization, dental or medical expenses shall be established by the board as determined by the board's actuary and shall be borne by the city and the members of the plan as follows:

- A. Contributions for dental benefits shall be made by the city and the members in the ratio of eight-to-three.
- B. Contributions for medical and dental insurance premiums costs attributable to the early retirement incentive programs described in Parts 18, 19, and 20 of this chapter shall be borne by the city.
- C. Contributions for other medical benefits shall be made by the city and the members in the ratio of one-to-one.

(Ord. 28914.)

## Part 4

### MEMBERSHIP.

#### Sections:

- 3.28.400 Continuation of members of the Chapter 3.24 retirement system holding city offices on June 30th and July 1, 1975.
- 3.28.410 Reinstatement from Chapter 3.24 service retirement and reentry into federated city service.
- 3.28.420 Reinstatement from or reentry after Chapter 3.24 disability retirement.
- 3.28.430 Reentry in city service, before retirement, by persons who retained membership in Chapter 3.24 retirement system pursuant to Section 3.24.510 or other provisions of Chapter 3.24 system.

- 3.28.440 Persons employed on June 30, 1975, as part-time, employees who are not members of the Chapter 3.24 retirement system.
- 3.28.450 Other persons who become city officers or employees on or after July 1, 1975.
- 3.28.460 Exclusions and exceptions - Mayor and members of city council.
- 3.28.470 Exclusions and exceptions - Members of boards and commissions.
- 3.28.490 Exclusions and exceptions - Persons temporarily employed pursuant to Section 1101(a)(4) of city Charter.
- 3.28.500 Exclusions and exceptions - Persons employed in event of emergency pursuant to Section 1101(a)(5) of city Charter.
- 3.28.510 Exclusions and exceptions - Persons employed pursuant to Section 1109 of city Charter.
- 3.28.520 Exclusions and exceptions - Volunteer workers.
- 3.28.530 Exclusions and exceptions - Emergency appointments in time of war or national emergency.
- 3.28.540 Exclusions and exceptions - Relief or antipoverty programs.
- 3.28.545 Exclusions and exceptions - Police recruits, firefighter recruits.
- 3.28.550 Exclusions and exceptions - Members of other retirement or pension systems.
- 3.28.560 Exclusions and exceptions - Part-time employees.
- 3.28.570 Termination of membership.
- 3.28.580 Election by persons who became members pursuant to Sections 3.28.400 through 3.28.430, inclusive, to allow accumulated contributions to remain in fund.
- 3.28.590 Election by members other than those specified in Section 3.28.580 to allow accumulated contributions to remain in fund.

**3.28.400 Continuation of members of the Chapter 3.24 retirement system holding city offices on June 30th and July 1, 1975.**

Each person who on June 30, 1975, was an officer or employee of the city holding an office or position entitling him or her to membership in this retirement plan pursuant to the provisions of Chapter 3.24 and who, in addition, was a member of the retirement plan on that date, shall become and be subject to the provisions of this Chapter 3.28 upon its becoming effective if he or she continues to hold that office or position to and through July 1, 1975, and, in addition, continues to be a member of the Chapter 3.24 retirement system until the effective date of this chapter. Upon becoming subject to the provisions of this chapter, each such person ceases to be a subject to the provisions of Chapter 3.24 and he or she, and all other persons or estates that might have any rights under Chapter 3.24 because of the person's coverage under Chapter 3.24, cease to have any rights under Chapter 3.24 but shall thereafter be governed by and have only such rights as are provided by this Chapter 3.28 system.

(Prior code § 2904.1150; Ord. 27838.)

**3.28.410 Reinstatement from Chapter 3.24 service retirement and reentry into federated city service.**

- A. A person who has been retired from service under the provisions of Chapter 3.24, at an age less than the age for compulsory retirement applicable to him or her, may be reinstated from retirement to federated city service by the retirement board in accordance with the provisions of this chapter, and, upon such reinstatement or thereafter, such person may be reemployed by the city in a position in the federated city service in accordance with the laws governing such employment in the same manner as a person who had not been so retired.
- B. The retirement board shall not reinstate any such person from service retirement unless:
  1. The person proposed to be reinstated has filed with the board a written application requesting such reinstatement;
  2. At least one (1) year has or will have expired between the effective date of said person's last retirement and the date of reinstatement; and
  3. The board has found and determined that said person's age on the effective date of his

reinstatement is at least six (6) months less than age seventy (70).

- C. When a person is reinstated from service retirement and reenters federated city service pursuant to this section, his or her service retirement allowance shall be canceled as of the effective date of the reinstatement, and, subject to the exceptions and exclusions hereinafter set forth in Sections 3.28.460 through 3.28.550 inclusive of this part, he or she shall become and be a member of this retirement plan as of the effective date of his or her new employment in the federated city service. Upon becoming a member of this plan, any such person who formerly was retired for service under the provisions of Chapter 3.24 ceases to be governed by the provisions of Chapter 3.24, and he or she and all other persons or estates that might have any rights under Chapter 3.24 because of the person's coverage under Chapter 3.24 cease to have any rights under Chapter 3.24 but shall thereafter be governed by and have only such rights as are provided for in this chapter.

(Prior code § 2904.1151; Ord. 27838.)

**3.28.420 Reinstatement from or reentry after Chapter 3.24 disability retirement.**

If a person retired for disability under the provisions of Chapter 3.24 and the disability retirement allowance is canceled for either of the following reasons, then, subject to the exclusions and exceptions hereinafter set forth in Sections 3.28.460 through 3.28.550 inclusive of this part, the person shall become and be a member of this plan upon being reinstated to a position in federated city service or upon reentry into federated city service. Upon becoming a member of this plan, any such person who formerly was retired for disability under the provisions of Chapter 3.24 ceases to have any rights thereunder but will thereafter be governed by and have only such rights as are provided for in this chapter. This provision applies to:

- A. Any person retired for disability under the provisions of Chapter 3.24 whose disability retirement is canceled pursuant to the provi-

sions of Section 3.24.1290 of the San José Municipal Code and who is reinstated, in accordance with the provisions of said Section 3.24.1290 to the city position held by him or her when retired for disability or to a position in the same classification of positions with duties within his or her capacity; or

- B. Any person retired for disability under the provisions of Chapter 3.24 whose disability retirement is canceled pursuant to the provisions of Section 3.24.1300 of the San José Municipal Code because of his or her reentry into federated city service in a position other than the position held when he or she retired for disability and other than any position in the same classification of positions as the position held when he or she retired for disability.

(Prior code § 2904.1152; Ord. 27838.)

**3.28.430 Reentry in city service, before retirement, by persons who retained membership in Chapter 3.24 retirement system pursuant to Section 3.24.510 or other provisions of Chapter 3.24 system.**

Subject to the exclusions and exceptions hereinafter set forth in Sections 3.28.460 through 3.28.550 inclusive of this part, each person, other than persons covered by the provisions of Sections 3.28.400, 3.28.410 and 3.28.420, who was a member of the plan as described in Chapter 3.24 and retained such membership upon leaving city service by exercising the option given him or her by Section 3.24.510 or other provisions of Chapter 3.24, shall become and be subject to the provisions of this Chapter pursuant to the provisions of this section if, on or after July 1, 1975, while he or she is still a member of the plan as described in Chapter 3.24, but before retirement thereunder for service or disability, he or she again becomes an officer or employee of the city in the federated city service. Upon the effective date the person again becomes an officer or employee in the federated city service, such person shall cease to be subject to the provisions of Chapter 3.24, and he or she and all other persons or estates that might have any rights under Chapter 3.24 because of such person's coverage under Chapter 3.24, shall cease to have any rights under Chapter 3.24 but shall thereafter be governed by and have only such rights as are provided in this chapter.

(Prior code § 2904.1153; Ord. 27838.)

**3.28.440 Persons employed on June 30, 1975, as part-time, employees who are not members of the Chapter 3.24 retirement system.**

- A. Subject to the exclusions and exceptions hereinafter set forth in Sections 3.28.460 through 3.28.550 inclusive of this part, each person who on June 30, 1975, was in the employ of the city as a part-time employee, excepting such of them, if any, as may become members of this retirement system under and pursuant to the provisions of Section 3.28.400, shall have and is hereby given an option of becoming subject to the provisions of this Chapter 3.28 if he or she continued to be so employed as a part-time employee of the city to and through July 1, 1975.

- B. Each of said persons, in order to exercise said option, shall file with the secretary of the retirement board a written statement, on a form to be furnished by the Board upon his or her request, declaring that he or she elects to become subject to the provisions of this chapter. Said statement shall be filed on or before, and no later than, the thirty-first day of August, 1975. Upon filing said written statement with the secretary in the manner and within the time specified in this section, such person shall become subject to the provisions of this chapter as of the effective date of this chapter. Contributions which would have been required of the person because of service rendered by him or her from July 1, 1975, to the date the person exercises said option shall be charged to him or her and deducted from his or her paycheck. No such person shall become subject to the provisions of this chapter unless he or she exercises said option in the manner and within the time specified in this section.

(Prior code § 2904.1154; Ord. 27838.)

**3.28.450 Other persons who become city officers or employees on or after July 1, 1975.**

Subject to the exclusions and exceptions hereinafter set forth in this Part, each person, other than those persons specified or mentioned in Sections 3.28.400 through 3.28.440, inclusive, who becomes an officer or employee of the city on or after July 1, 1975 by virtue of an appointment made on or after said date shall become and be a member of this plan as of the effective

date of his or her appointment; provided, however, that the foregoing provisions of this section do not apply to persons employed to render part-time service.  
(Prior code § 2904.1155; Ord. 27838.)

**3.28.460 Exclusions and exceptions - Mayor and members of city council.**

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this plan because of his or her election or appointment to, or his or her holding the office of, mayor or member of the city council or because of any service rendered by him or her while he or she is mayor or a member of the council.  
(Prior code § 2904.1156; Ord. 27838.)

**3.28.470 Exclusions and exceptions - Members of boards and commissions.**

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this plan because of his or election or appointment to, or his or her membership in, any board or commission of the city, or because of his or her election or appointment to or his or her holding of any office in said board or commission, or because of any service rendered as a member or officer of any such board or commission.  
(Prior code § 2904.1157; Ord. 27838.)

**3.28.490 Exclusions and exceptions - Persons temporarily employed pursuant to Section 1101(a)(4) of City Charter.**

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this plan because he or she is temporarily employed pursuant to the provisions of Subparagraph (4) of Subsection (a) of Section 1101 of the Charter of the city to make or conduct any special inquiry, investigation, examination or installation, or to render professional, scientific or technical services of an occasional or exceptional nature, nor because of any service rendered pursuant to such employment.  
(Prior code § 2904.1159; Ord. 27838.)

**3.28.500 Exclusions and exceptions - Persons employed in event of emergency pursuant to Section 1101(a)(5) of City Charter.**

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this plan because he or she is employed pursuant to Subparagraph (5) of Subsection (a) of Section 1101 of the Charter of the city in the event of an emergency to

perform services required because of and during such emergency, nor because of any service rendered pursuant to such employment.  
(Prior code § 2904.1160; Ord. 27838.)

**3.28.510 Exclusions and exceptions - Persons employed pursuant to Section 1109 of City Charter.**

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this plan because he or she is employed or his or her services are contracted for pursuant to the provisions of Section 1109 of the City Charter or pursuant to any transfer, consolidation or contract mentioned in said Section 1109, nor because of any services rendered pursuant to any such employment or contract.  
(Prior code § 2904.1161; Ord. 27838.)

**3.28.520 Exclusions and exceptions - Volunteer workers.**

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this plan because of his or her appointment as or his or her being a volunteer member of any police, fire or civil defense department, force, agency or organization, nor because of any service rendered as such volunteer member.  
(Prior code § 2904.1162; Ord. 27838.)

**3.28.530 Exclusions and exceptions - Emergency appointments in time of war or national emergency.**

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this plan because of any appointment or employment made or entered into pursuant to the provisions of Section 1110 of the Charter of the city, nor because of any service rendered pursuant to any such appointment or employment.  
(Prior code § 2904.1163; Ord. 27838.)

**3.28.540 Exclusions and exceptions - Relief or anti-poverty programs.**

Anything elsewhere to the contrary notwithstanding, unless otherwise provided by the city council upon recommendation of the retirement board, no person shall become or be a member of this plan because of his or her employment pursuant to any relief or anti-poverty program where such employment is provided primarily to give relief or aid to such persons.  
(Prior code § 2904.1164; Ord. 27838.)

**3.28.545 Exclusions and exceptions - Police recruits, firefighter recruits.**

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this plan because of any appointment or employment as a police recruit or firefighter recruit or because of any appointment or employment for which the principal purpose is training such person to become a police officer or firefighter.  
(Ords. 22677, 22735; Ord. 27838.)

**3.28.550 Exclusions and exceptions - Members of other retirement or pension systems.**

- A. Anything elsewhere to the contrary notwithstanding, persons who are members of any police, fire or other retirement or pension system (other than this plan as described in this chapter or in Chapter 3.24, the federal social security system, or any retirement or pension system of the federal government) supported in whole or in part by funds of the United States government, or of any state government, or of this city or any other city or municipal government or corporation, or of any political subdivision, department, district, authority or agency of any such government or corporation, who are receiving or are entitled to any credit in such other system for any service rendered to the city are hereby excluded and excepted from membership in this plan; provided and excepting, however, that nothing contained in this section shall be deemed to prohibit any such person from becoming or being a member of this plan after the person has ceased being a member of the abovementioned police, fire or other system if the person should thereafter qualify for membership in this plan.
- B. For the purpose of this section, the following persons shall not be deemed to be members of any other retirement or pension system:
1. Persons who merely are receiving pensions or retirement allowances or other payments, from any source whatever, because of or on account of service rendered to an employer other than the City of San José while they were not in the employ or service of the city.
  2. Persons whose membership in another retirement or pension system is in a reciprocal system, as defined in Part 21 of this chapter, and whose service in such other system is included as service in this plan solely for the purpose of meeting the

minimum service requirements for qualification for benefits and retirement allowances pursuant to Subsection D. of Section 3.28.2420 of Part 21.

(Prior code § 2904.1165; Ords. 24682, 27838.)

**3.28.560 Exclusions and exceptions - Part-time employees.**

Anything elsewhere to the contrary notwithstanding, no person appointed or employed as a part-time employee shall become or be a member of this plan because of such appointment or employment, or because of any service rendered pursuant to any such appointment or employment, unless he or she became or becomes a member of this plan under and pursuant to the provisions of Section 3.28.400 through 3.28.440, inclusive, or unless, having become a member of this plan under any of the foregoing sections of this part, and while rendering such full-time city service for the city as qualifies him or her to continue as a member of this plan, he or she discontinues such full-time service and, without a break in service, continues to render or does render city part-time service of a kind and nature not excluded or excepted by the provisions of Sections 3.28.460 through 3.28.550, inclusive, of this part.  
(Prior code § 2904.1166; Ord. 27838.)

**3.28.570 Termination of membership.**

Except as otherwise provided in Sections 3.28.580 and 3.28.590, a person ceases to be a member of this plan upon the occurrence of any of the following events:

- A. Upon his or her death before retirement for service or disability;
- B. Upon his or her retirement for service or disability;
- C. Upon discontinuance of his or her federated city service because of resignation or discharge, or because of layoff or leave of absence found by the retirement board to have resulted in permanent discontinuance, and in the latter case as of the date of the determination by the board that the discontinuance is permanent.

(Prior code § 2904.1167; Ord. 27838.)

**3.28.580 Election by persons who became members pursuant to Sections 3.28.400 through 3.28.430, inclusive, to allow accumulated contributions to remain in fund.**

- A. The provisions of this section apply only to persons who became subject to the provisions of



this chapter pursuant to the provisions of Sections 3.28.400 through 3.28.430, inclusive, of this part.

- B. If the federated city service of a member described in Subsection A. is discontinued by reason of resignation or discharge, or by reason of layoff or leave of absence deemed or found by the retirement board to have resulted in permanent discontinuance (and in such case, as of the date of determination by the board that the discontinuance is permanent), or if such member retires for disability under the provisions of this chapter but such retirement is followed by a cessation of the disability because of which the member was retired and his or her disability retirement allowance is canceled but he or she does not thereupon reenter federated city service, then, in either of said events, if the amount of said member's accumulated normal contributions standing to his or her credit at that time is five hundred dollars or more, the member shall have the right to elect, not later than the ninetieth day from and after the date upon which notice of such right is mailed to him or her at the latest address on file with the board:
  1. To continue (or in the case of the abovementioned person whose disability retirement allowance was canceled, to renew) his or her membership by allowing all of his or her accumulated prior service contributions and all or part (but in no event less than five hundred dollars of his or her accumulated normal contributions to remain in the retirement fund; or
  2. To terminate or not renew membership, as the case may be, by withdrawing all of his or her accumulated contributions.
- C. Failure to make such election within the above-specified time shall be deemed to be an irrevocable election to terminate or not renew membership, as the case may be, by withdrawing all of his or her accumulated contributions; provided and excepting, however, that if such member is entitled under this plan to credit for twenty or more years of federated city service, the failure to make such election within said time shall be deemed to be an election to continue or renew, as the case may be, his or her membership by allowing all of his or her accumulated contributions to remain in the retirement fund.
- D. An election to allow all or part of one's accumulated normal contributions to remain in the fund may be revoked at any time by said person as to all such normal contributions or as to any part of them in excess of five hundred dollars.
- E. Upon electing to terminate or not renew membership by withdrawing all of his or her accumulated contributions, such person immediately:
  1. Ceases to be a member of this plan (or loses the right to renew his or her membership, as the case may be); and
  2. Loses all rights to any credit for federated city service to which he or she was entitled hereunder; and
  3. Except as may be otherwise provided elsewhere in this plan, loses all other rights or privileges under this plan excepting the right to the return of his or her said accumulated contributions, which said contributions shall be returned to the person forthwith.
- F. Upon electing to continue or renew membership by allowing all of his or her accumulated prior service contributions and all or part (but not less than five hundred dollars of his or her accumulated normal contributions to remain in the retirement fund:
  1. The said person continues to be or again becomes a member; and
  2. The member and his or her survivors shall thereafter have such rights, if any, as are provided elsewhere in this Chapter 3.28 for the member and his or her survivors, except that, unless otherwise provided elsewhere in this plan, he or she shall lose and shall no longer be entitled to credit for any federated city service on account of which such withdrawn contributions had been paid into the retirement fund. In determining the federated city service for which a person is no longer entitled to credit upon such partial withdrawal, the withdrawn contributions shall be deemed to have been paid into the retirement fund on account of the latest federated city service rendered by the person to the city, or on account of the person's earliest federated city service if so requested by said person at the time he or she withdraws a part of his or her accumulated normal contributions.
- G. A member may at any time, if he or she so elects, voluntarily relinquish such right as the

member may have to be credited for federated city service for such periods of time as may be designated by him or her, without withdrawing any contributions paid by the member because of such service, provided he or she retains credit for not less than five years of continuous federated city service; and in such event, in determining the member's eligibility for or the amount of any benefits to which he or she may subsequently be entitled, the member shall be given no credit for any federated city service so relinquished, and any contributions left in the fund which were made because of the service for which the member has relinquished credit shall be treated as income of the retirement fund.

- H. If on or after March 28, 2005, the member is to receive a distribution of an eligible rollover distribution, with a present value greater than one thousand dollars, and if a member does not elect to have such distribution paid directly to an eligible retirement plan specified by member in a direct rollover or to receive the distribution directly, then the system shall pay the distribution in a direct rollover to an individual retirement plan designated by the board in accordance with Section 401(a)(31)(B) of the Internal Revenue Code and IRS Notice 2005-5.

(Prior code § 2904.1168; Ords. 27838, 28885.)

**3.28.590 Election by members other than those specified in Section 3.28.580 to allow accumulated contributions to remain in fund.**

- A. The provisions of this section apply only to members of this plan who are entitled to credit for five or more years of federated city service rendered after June 30, 1975, and who are not covered by the provisions of Section 3.28.580.
- B. If the federated city service of a member described in Subsection A. above is discontinued by reason of resignation or discharge or by reason of layoff or leave of absence which is determined by the retirement board to have resulted in permanent discontinuance (the effective date of such discontinuance to be the date of said determination by the board), then such member shall have the right to elect:
1. To continue membership in this system by allowing all of his or her accumulated contributions to remain in the retirement fund; or

2. To terminate membership in this system by withdrawing all of his or her accumulated contributions.

- C. If a member described in Subsection A. above retires for disability but the disability retirement allowance is canceled because of a cessation of the disability for which the member retired and such member does not thereupon reenter federated city service, then such member shall have the right to elect:

1. To renew membership in this system by allowing all of his or her accumulated contributions to remain in the retirement fund; or
2. Not to renew membership in this system by withdrawing all of his or her accumulated contributions.

- D. The election described in Subsections B. and C. shall be made not later than the ninetieth day from and after the date notice of the right to make such election is mailed to the member at the latest address on file with the board.

1. In the case of a member entitled to credit for less than twenty years of federated city service, failure to make such election within said ninety days shall be deemed to be an irrevocable election to terminate or not renew, whichever is applicable, membership in this system by the withdrawal of all of the member's accumulated contributions.

2. In the case of a member entitled to credit for twenty or more years of federated city service, failure to make such election within said ninety days shall be deemed to be an election to continue or renew, whichever is applicable, membership in this system by allowing all of the member's accumulated contributions to remain in the retirement fund.

- E. Upon electing to terminate or not renew membership in this system pursuant to Subsection B., C. or D. above, the person immediately:

1. Ceases to be a member of this system or loses the right to renew membership in this system, whichever is applicable; and
2. Unless otherwise provided elsewhere in this chapter, loses all credit for any federated city service to which he or she was entitled under this system; and
3. Loses all other rights and privileges under this system except the right to the return of his or her accumulated contributions, and

such contributions shall be returned to such person forthwith.

- F. Upon electing to continue or renew membership in this system, whichever is applicable, by allowing all of his or her accumulated contributions to remain in the fund, the person:
1. Continues to be, or again becomes, a member of this system; and
  2. Shall continue to be entitled to credit for such federated city service as he or she was entitled as of the time the person made such election; and
  3. Shall thereafter have such rights, if any, as are provided in this chapter for such person or such person's survivors.
- G. If on or after March 28, 2005, the member is to receive a distribution of an eligible rollover distribution, with a present value greater than one thousand dollars, and if a member does not elect to have such distribution paid directly to an eligible retirement plan specified by member in a direct rollover or to receive the distribution directly, then the system shall pay the distribution in a direct rollover to an individual retirement plan designated by the board in accordance with Section 401(a)(31)(B) of the Internal Revenue Code and IRS Notice 2005-5.

(Prior code § 2904.1169; Ords. 21371, 23485, 27838, 28885.)

## Part 5

### FEDERATED CITY SERVICE

#### Sections:

- 3.28.600 Definitions generally.
- 3.28.610 Federated city service defined.
- 3.28.620 Exclusions and exceptions from federated city service.
- 3.28.630 Military service defined - Deemed federated city service when - Conditions.
- 3.28.640 Service credit for absence on or after July 1, 1975, because of service-connected injury or illness.
- 3.28.650 Service under police or fire department plan where functions and duties of former police or fire department position are transferred to federated city service.

- 3.28.660 Service under police and fire department retirement plan where member elects to pay contributions to federated system for such service.
- 3.28.670 Part-time service rendered prior to July 1, 1975.
- 3.28.680 Computation of amount of service.
- 3.28.685 Absence without compensation during city hall closures.
- 3.28.690 Absence without compensation during periods of mandatory reduction in paid working time.

#### 3.28.600 Definitions generally.

Unless the context otherwise requires, the definitions set forth in this Part 5 govern the construction and interpretation of provisions of this retirement system as set forth in this Chapter 3.28. (Prior code § 2904.1200.)

#### 3.28.610 Federated city service defined.

- A. Subject to other provisions of this retirement system as set forth in this Chapter 3.28, the term "federated city service", as used in this Chapter 3.28, means service for which a member of this system is entitled to credit and for which the member shall receive credit under this system.
- B. Subject to such exclusions and exceptions and to such conditions and limitations as are set forth in this chapter, "federated city service" shall be deemed to include the following service, and none other, as follows:
  1. City service rendered by a member prior to July 1, 1975, and before becoming a member of this system, by a person who became a member of this system pursuant to Sections 3.28.400 through 3.28.430 where such service meets the following requirements:
    - a. With respect to a person who became a member of this system pursuant to Section 3.28.400 or Section 3.28.430, the service rendered prior to July 1, 1975, was service for which the person was entitled to credit under the Chapter 3.24 retirement system as of the time the person became a member of this system.
    - b. With respect to a person who became a member of this system pursuant to Section 3.28.410 or Section 3.28.420,

- the service rendered prior to July 1, 1975, was service for which the person was entitled to credit under the Chapter 3.24 retirement system as of the time the person retired under the Chapter 3.24 system.
2. If a member became entitled to credit for any such service under the Chapter 3.24 retirement system only for the purpose of qualifying for benefits and not for the purpose of determining the amount of benefits to which the member might become entitled, the credit the member shall receive under this system for such service shall be subject to the same limitation.
  3. Service rendered by a member on or after July 1, 1975, as an employee of the city, for the city and for compensation, provided such service is rendered by such member both while receiving such compensation and while a member of this system.
  4. Military service rendered by a member on or after July 1, 1975, while a member of this system if, and only if, the member is or becomes entitled to credit for such service under the provisions of Section 3.28.630, and then only to the extent and for the purpose specified in said section.
  5. Absence of a member from federated city service on or after July 1, 1975, while a member of this system, because of service-connected injury or illness if, and only if, said member is or becomes entitled to credit for such absence under the provisions of Section 3.28.640, and then only to the extent and for the purpose specified in said section.
  6. Service rendered by a member prior to the time he or she becomes a member of this system for which the member was entitled to credit under the provisions of a police and fire department retirement plan of the city if, and only if, said member becomes entitled to credit for such service under the provisions of Section 3.28.650 or Section 3.28.660.
  7. Absence of a member from federated city service on or after July 1, 1975, while a member of this system, because of paid holiday or leave of absence with full compensation provided that the member continues to make contributions to the retirement fund during such absence.
  8. Additional service credit as provided in Section 3.28.2120 of Part 18, Section 3.28.2220 of Part 19, or Section 3.28.2320 of Part 20 of this chapter.
  9. Absence of a member without compensation because of a city hall closure where all of the conditions of Section 3.28.685 are satisfied.
  10. Eligible prior service credit purchased by a member in accordance with Sections 3.28.690 and 3.28.691.
- (Prior code § 2904.1201; Ords. 22573, 23366, 24107, 24346, 24807, 25732.)
- 3.28.620 Exclusions and exceptions from federated city service.**
- As used in this retirement system, the term "federated city service" shall not be deemed to mean or include any of the following service, the latter being hereby excluded and excepted from the definition of "federated city service":
- A. Service rendered as mayor or as a member of the city council;
  - B. Service rendered as a member of any city board or commission unless the person rendering such service is otherwise employed by the city in an office or position which qualified him for membership in this system, and he is required by virtue of his said office or position to render such service as a member of a city board or commission;
  - C. Except as permitted by Part 22, service rendered while temporarily employed pursuant to the provisions of subparagraph (4) of subsection (a) of Section 1101 of the Charter of the city to make or conduct a special inquiry, investigation, examination or other installation, or to render professional, scientific or technical services of an occasional or exceptional character;
  - D. Service rendered while employed pursuant to the provisions of subparagraph (5) of subsection (a) of Section 1101 of the Charter of the city, in the event of an emergency, to perform services required because of and during such emergency;
  - E. Service rendered as a volunteer member of any police, fire or civil defense department, or of any police, fire or civil defense force organization;
  - F. Service rendered while employed, and service contracted for, pursuant to any transfer, consolidation or contract mentioned or referred to in Section 1109 of the Charter of the city;
  - G. Service rendered while employed pursuant to Section 1110 of the Charter of the city;

- H. Except as permitted by Part 22, service rendered while employed pursuant to any relief or antipoverty program where such employment is primarily for the purpose of giving relief or aid to such employees;
- I. Except as otherwise provided by Section 3.28.670, part-time service rendered by a member prior to July 1, 1975, for which he was not entitled to any credit under the Chapter 3.24 retirement system;
- J. Part-time service rendered on or after July 1, 1975, other than:
  - 1. Part-time service rendered on or after said date by a part-time employee who becomes a member pursuant to Section 3.28.400 or Section 3.28.440; and
  - 2. Part-time service rendered on or after said date by any other member if such part-time service follows, without a break in service, the rendition of full-time service by said member; and
  - 3. Eligible prior service purchased by a member in accordance with Part 22.
- K. Except as may be otherwise provided in Sections 3.28.650 and 3.28.660 of this part or in Part 21, service rendered by a person while he is a member of the police and fire department retirement plan established by the provisions of Chapter 3.32 of the San José municipal code, or the police and fire department retirement plan established by the provisions of Chapter 3.36 of the San José municipal code, or any other retirement or pension plan or system (other than this system, the Chapter 3.24 retirement system, the system established by the provisions of Chapter 3.20 of this Code, the system established by the provisions of Chapter 3.16 of this Code, the federal social security system, or any other federal retirement system) supported in whole or in part by funds of the United States, of any state government, or the city or any other city or municipal government or corporation, or of any political subdivision, department, district, authority or agency of any of said governments, if, while a member thereof the person received or was entitled to credit for such service in such system.
- L. Except as provided in Part 22, service performed while a member of the eligible deferred compensation plan established by Chapter 3.50 of this Code.

(Prior code § 2904, 1202; Ords. 24682, 25732.)

### 3.28.630 Military service defined - Deemed federated city service when - Conditions.

"Federated city service" shall be deemed to include military service rendered by a member on or after July 1, 1975, while a member of this system, and such member shall be entitled to credit for such service, if and only if he or she is entitled to credit for such service under the following provisions of this section, and then only to the extent and for the purpose or purposes hereinafter provided in this section.

- A. Military service defined. As used in this section, "military service" shall be deemed to mean service rendered on or after July 1, 1975, as a member of the Armed Forces of the United States or of the Merchant Marine of the United States, either during a war including the United States as a belligerent or in any other national emergency, or in time of peace if the person performing such service is drafted for such service by the United States.
- B. Military service because of which city must make member contributions.
  - 1. If, on or after July 1, 1975, while he or she is a member of this system, and while on leave of absence without compensation to engage in military service, a member of this system renders military service other than as a member of the Merchant Marine of the United States, and if, in addition, said member returns to federated city service after discharge under conditions other than dishonorable within six months after such discharge or within six months after any period of rehabilitation afforded by the United States government, including a period of rehabilitation for purely educational purposes, the city shall contribute to this system on behalf of such member such amounts of contribution which would have been payable by said member, together with such additional amounts as would have been payable by the city, on the basis of compensation earnable at the commencement of said member's absence plus the annual salary adjustments which he or she would have received if said member had remained in federated city service and had not left for said military service. For purposes of this subsection, said member absent on said military service shall be

deemed to have received a rating for the period of such absence entitling him or her to annual salary adjustment. Also, for purposes of this subsection, a member who is granted a leave of absence or placed on a city civil service reemployment list as of the same date he or she was reinstated from military leave, if said date of reinstatement is within the abovementioned six months, shall be considered as having returned to city service within the abovementioned six months if he or she returns to city service at the end of such leave of absence or upon offer of employment from the reemployment list or if he or she retires under this system for service or disability during such leave.

2. Any military service mentioned in this subsection because of which the city is required to make all of the contributions above specified in this subsection shall be deemed to be "federated city service" for which said member shall be entitled to credit in the same manner as if he or she had not been absent from federated city service during such time.

C. Military service because of which city need not pay member contributions.

1. If, on or after July 1, 1975, while he or she is a member of this system and while on leave of absence without compensation to engage in military service, a member of this system renders any military service as such service is above defined, and if such member is not entitled to have the city pay his or her member contributions during such period of time pursuant to the immediately preceding Subsection B., then in such event, said member may contribute to the system, either during his or her absence on military service or upon his or her return to federated city service, at times and in the manner prescribed by the retirement board, amounts equal to the contributions which would have been payable by said member to the system on the basis of his or her compensation earnable at the commencement of the leave of absence if he or she had remained in city service. If said member does so contribute, "federated city service" shall be deemed to include such military service and the member shall receive credit for the absence in military

service in the same manner as if he or she had not been absent but were still in federated city service. If, however, said member does not contribute as aforesaid, such military service shall be credited to said member as "federated city service" only for the purpose of determining said member's eligibility for benefits under this system and such military service shall not be credited for the purpose of determining the amount of such benefits.

2. If the member elects to contribute as aforesaid and does so contribute, the city shall also contribute because of such military service to the same extent as it would have contributed if the member had not been absent on military service.

D. Manner in which city may contribute. Any contributions required of the city by the provisions of this section may be made in one sum or in the manner in which other contributions are made. Anything elsewhere in this Chapter 3.28 to the contrary notwithstanding, no contributions made by the city pursuant to the provisions of Subsection B. of this section can ever be withdrawn by or paid to a member or any of the member's survivors or beneficiaries or estate.

B. Part-time employees. The provisions of this section shall apply to part-time employees only to the extent that they were in this system prior to entry into the military service.

F. For the purposes of this section, "leave of absence without compensation to engage in military service" shall include any leave of absence to engage in military service granted on or after September 1, 1990, during which the member receives compensation from the city pursuant to an action of the city council approving special or supplemental pay or benefits for persons on leave for military duty.

(Prior code § 2904.1203; Ords. 24036, 28885.)

3.28.640 Service credit for absence on or after July 1, 1975, because of service-connected injury or illness.

- A. Time on or after July 1, 1975, during which a member is a member of this system and during which he is absent from federated city service by reason of injury or illness determined within one year after the end of such absence to have arisen out of and in the course of his employment with

the city, shall be deemed to be "federated city service" for which such member is entitled to credit for the purpose of qualifying for benefits under this system but not for the purpose of determining the amount of such benefits, unless he contributes during such absence, or upon his return to city service at times and in the manner prescribed by the board, the same amount of contributions as he would have been required to contribute if he were not absent because of any said injury or illness. If he does contribute as aforesaid, said time shall be deemed "federated city service" for which he shall be entitled to credit the same as if he were not absent from federated city service because of such injury or illness. The provisions of this section do not apply to time during which a person is retired for disability or service. Also, the provisions of this section do not apply to part-time employees.

- B. Subject to any limits on annual contributions imposed by Section 415 of the Internal Revenue Code of 1986, as amended, a member who elects to make contributions to purchase full service credit for a period of leave of absence pursuant to Subsection A. above may pay the contributions:
1. In one lump sum within sixty days from and after the date the member returns to city service; or
  2. For elections made on or before January 31, 2011, in monthly or biweekly installments by pre-tax payroll deductions, paid over a period of time not to exceed eight years; or
  3. For elections made on or after February 1, 2011, in monthly or biweekly installments by post-tax payroll deductions, paid over a period of time not to exceed eight years; or
  4. In a combination of a lump sum and post-tax installments.
- C. Any member electing to pay the contributions in installments or to make the lump sum payment by payroll deduction shall execute a payroll authorization form authorizing the payment of the required contributions by payroll deduction. The payroll authorization form shall be filed with the director of finance.
- D. The election to purchase credit through post-tax payroll deductions, pursuant to Subsection B.3. or 4. above, may be revoked. During the time the post-tax payroll deduction election is in effect, the member may make additional payments to the retirement fund for the purchase of such service credit.

- E. All contributions under Subsections B.2. and C. shall be treated as pre-tax salary reductions pursuant to Internal Revenue Code Section 414(h)(2).

(Prior code § 2904.1204; Ord. 28885.)

**3.28.650 Service under police or fire department plan where functions and duties of former police or fire department position are transferred to federated city service.**

Subject to the following conditions, restrictions, limitations and other provisions, a member of this system, who becomes such on or after July 1, 1975, pursuant to the provisions of Section 3.28.450 and who, immediately prior to becoming a member of this system, was a member of the police and fire department plan established or administered by or pursuant to the provisions of Chapter 3.32 or Chapter 3.36 of the San José Municipal Code shall be entitled to credit under this system for service, if any, for which he was entitled to credit under said police and fire department retirement plan at the time his membership in said police and fire department plan was last terminated, if, and only if all of the following conditions exist and are satisfied:

- A. Such person must have been, immediately prior to becoming a member of this system, a member of the police and fire department plan established or administered by or pursuant to Chapter 3.32 or 3.36 of the San José Municipal Code; and
- B. Such person must have held, immediately prior to becoming a member of this system, a city office or positions in the police or fire department of the city which qualified him for membership in and because of which he was a member of the abovementioned police and fire department retirement plan; and
- C. The office or position held by such person in the police or fire department of the city immediately prior to his becoming a member of this system must have been abolished or discontinued, and the functions and duties thereof, or substantially the same functions and duties, transferred to the federated city service; and
- D. Such person must have been transferred, at the time his office or position in the police or fire department was abolished or discontinued, to a new office or position in the federated city service, to perform substantially the same functions and duties as he performed in his former office or position; and

- E. Such person's abovementioned transfer must have taken place without any break in service rendered by such person, and without such person being required by civil service regulations to take or pass any civil service examination for the office or position to which he was transferred; and
- F. Such person's membership in the abovementioned police and fire department retirement plan must have ceased and terminated as of the time or immediately prior to his said transfer to an office or position entitling him to membership in this system; and
- G. Such person must not have received or requested a return of any contributions paid or made by him to said police and fire department retirement plan, and must not have elected to continue making contributions to the police and fire department retirement plan pursuant to the provisions of Section 3.32.010, 3.36.1620 or 3.36.1630, or any other provision of said plan; and
- H. Such person must have filed with the retirement board on or before and no later than the thirtieth day immediately following the date as of which his position in the police or fire department is abolished or discontinued and he is transferred to an office or position entitling him to membership in this system, a written statement, in duplicate, duly signed by him wherein he elects to receive credit under this system for service for which he was entitled to credit under said police and fire department retirement plan at the time his membership therein was last terminated, and where he consents to and authorizes the transfer and payment into the retirement fund established by this chapter, from the retirement fund established under the police and fire department retirement plan, of all moneys contributed by him to the police and fire department retirement fund, together with interest thereon; and
- I. A copy of the statement specified in the immediately preceding subsection H. shall have been transmitted by the retirement board to the board which is charged with the duty of administering the abovementioned police and fire department retirement plan of which said person was formerly a member; and there shall have been transferred to the retirement fund established under this chapter, from the retirement fund established under the last-mentioned police and fire department retirement

fund, all moneys contributed by said person to the abovementioned police and fire department retirement plan, together with interest thereon, moneys being so transferred being thereafter deemed to be normal contributions, or prior service contributions where applicable, of said person to this retirement system for the service credited to him under this system:

(Prior code § 2904.1205.)

**3.28.660 Service under police and fire department retirement plan where member elects to pay contributions to federated system for such service.**

Subject to the following conditions, restrictions, limitations and other provisions, a person who becomes a member of this system on or after July 1, 1975, pursuant to the provisions of Section 3.28.450 and who, prior to becoming a member of this system but on or after February 1, 1962, was a member of the police and fire department retirement plan established pursuant to Chapter 3.32 or Chapter 3.36 of the San José municipal code, shall be entitled to credit under this system for service, if any, for which the person was entitled to credit under said police and fire department retirement plan at the time his or her membership therein was last terminated, if all of the following conditions exist and are satisfied:

- A. Such person must have held, prior to becoming a member of this system, a city position in the police department or fire department of the city which qualified the person for membership in, and because of which the person was a member of the police and fire department retirement plan; and
- B. Such person's membership in the police and fire department retirement plan must have ceased and terminated prior to his or her becoming a member of this system; and
- C. Such person must not have elected to continue making contributions to the police and fire department retirement plan, pursuant to the provisions of Section 3.36.1630 nor have retained any rights to benefits from said plan pursuant to any other provision of said plan (other than rights as an eligible surviving spouse or surviving child or rights as a former spouse under a domestic relations order of a court of competent jurisdiction); and
- D. Such person must have filed with the retirement board a written notice of election re police and fire service, wherein the person elects to receive



credit under this system for service for which he or she was entitled to credit under the police and fire department retirement plan pursuant to this section, and wherein the person agrees to pay into the retirement fund established by this chapter the amounts specified in Subsection E. below. Such notice of election must be filed on or before the later of:

1. The thirtieth day immediately following the date on which there is deposited in the United States mail, addressed to the person at his or her address shown in the records of the retirement board, a written notice of the person's right to make the election provided in this section; or
  2. The thirtieth day following the date as of which the person becomes a member of this system.
- E. In order to receive service credit in this system for service rendered while a member of the police and fire department retirement plan, the person must pay into the retirement fund established by this chapter an amount of money sufficient to make the accumulated contributions standing to the credit of the person's individual account in this system equal to the amount they would be if:
1. The person had been a member of this system (and of the Chapter 3.24 system with respect to service rendered prior to July 1, 1975), in the position because of which he or she became a member of this system, during the time he or she was rendering the previous service in the police department or fire department for which he or she seeks to get credit; and
  2. The contributions payable to this system and to the Chapter 3.24 system under such circumstances had been deducted from the person's compensation and paid into the retirement fund pursuant to this system and the Chapter 3.24 system during all of such time.
- F. Subject to any limits on annual contributions imposed by Section 415 of the Internal Revenue Code of 1986, as amended, a person who elects to purchase credit for prior police and fire service may pay of the contributions required by Subsection E. above:
1. In one lump sum within sixty days from and after the date the person files the written notice of election to purchase such service credit; or
  2. For elections made on or before January 31, 2011, in installments by pre-tax payroll deduction; paid over a period of time not to exceed eight years; or
  3. For elections made on or after February 1, 2011, in monthly or biweekly installments by post-tax payroll deductions, paid over a period of time not to exceed eight years; or
  4. By transfer of moneys contributed by him to the police and fire department retirement fund, together with interest thereon, from the police and fire department retirement fund; or
  5. By a combination of the above.
- G. Any member electing to pay the contributions by pre-tax payroll deduction shall execute a binding irrevocable payroll authorization form authorizing the payment of the required contributions by payroll deduction. Such irrevocable payroll authorization form shall be filed with the director of finance within the time specified in Subsection D. above for the filing of the person's election to receive service credit.
- The election to purchase credit for prior police and fire service through pre-tax payroll deductions and the authorization to make payments by pre-tax payroll deductions shall be irrevocable. During the time the irrevocable election is in effect, no direct payments from the member to the retirement fund shall be made by the member or accepted by this system.
- H. The election to purchase credit for prior police and fire service through post-tax payroll deductions and the authorization to make payments by post-tax payroll deductions shall be revocable. During the time the revocable election is in effect, the member may make additional direct payments to the retirement fund.
- I. A copy of the notice of election specified in Subsection D. above shall be transmitted by the retirement board to the board which is charged with the duty of administering the police and fire department retirement plan of which said person was formerly a member.
- J. All contributions under Subsections F.2. and G. shall be treated as pre-tax salary reductions pursuant to Internal Revenue Code Section 414(h)(2).
- K. If a person elects to purchase credit for prior police and fire service and make the contributions specified in this section, and subsequently does pay all such moneys as provided in this section,

the person shall be credited under this system for the prior police and fire service.

- L. If a member elects to redeposit and pay said moneys but fails to complete the redeposit, then:
1. If the failure to complete the redeposit is because of death of the person while in federated city service and before retirement, the person shall be credited with the amount of service which is determined by the board to be attributable to the amount of accumulated contributions redeposited as of the date of the person's death.
  2. If the failure to redeposit is for any reason other than the death of the person prior to retirement, any contributions made pursuant to the election shall be credited to the person's accumulated normal contributions account but the person shall receive no credit for any prior police and fire service.
- (Prior code § 2904.1206; Ords. 26006, 28885.)

### 3.28.670 Part-time service rendered prior to July 1, 1975.

- A. For the purpose of qualifying for benefits payable under this system, other than and excepting the forty percent minimum allowance provided for in the subsection A. of Section 3.28.1480, but not for the purpose of determining the amount of any benefit to which one may become entitled after he qualifies for such benefit, a member who becomes such pursuant to the provisions of Section 3.28.440 shall be given credit for all part-time service, other than service of a kind specifically excluded by the foregoing provisions of this part, rendered by him for the city prior to July 1, 1975. For such limited purpose only, such service shall be deemed to be federated city service rendered on and after July 1, 1975. A part-time employee who becomes a member pursuant to Section 3.28.400 also shall have the right to treat such service as having been rendered on and after July 1, 1975, for the above-specified limited purpose only.
- B. Notwithstanding subsection A. of this Section 3.28.670, a member who satisfies the eligibility requirements of Section 3.28.2510, may purchase credit for part-time service rendered prior to July 1, 1975, as provided in Part 22 of this chapter. If the member elects to purchase credit for such part-time service and completes the required payments of contributions and interest, the limitations of subsection A. above shall not apply

and such service shall be deemed to be federated city service for all purposes under this chapter. (Prior code § 2904.1208; Ord. 25732.)

### 3.28.680 Computation of amount of service.

- A. Except as otherwise provided with respect to absence on military service and as otherwise provided in Section 3.28.685 and 3.28.690, time during which a member is absent from federated city service without compensation shall not be allowed in computing federated city service.
- B. The Retirement Board shall credit a member with one year of federated city service for one thousand seven hundred thirty-nine or more hours of federated city service rendered by the member in any calendar year. Credit for more than one year of such service shall not be allowed for service rendered in any calendar year.
- C. If a member renders less than one thousand seven hundred thirty-nine hours of federated city service in a calendar year, as in the case of part-time service, the member shall be given credit for that proportion of one year which the hours of federated city service rendered by the member in such year bear to one thousand seven hundred thirty-nine hours.
- D. Notwithstanding Subsections B. and C. above, the retirement board shall credit a member with one year of federated service credit for each two thousand eighty or more hours of eligible prior service purchased by a member pursuant to Part 22. A member shall be given credit for any purchased eligible prior service that is less than two thousand eighty hours in the same proportion of one year which the hours of purchased eligible prior service bears to two thousand eighty hours.
- (Prior code § 2904.1207; Ords. 24807, 25732, 28603.)

### 3.28.685 Absence without compensation during city hall closures.

Time during which a member was absent without compensation because of a city hall closure shall constitute "federated city service" in any case where all of the following requirements are satisfied:

- A. The absence without compensation occurred during any of the following periods of time in which city hall was not open for public business because of a city council-approved closure:
1. December 24, 1992, through January 3, 1993, inclusive;

2. December 23, 1993, through January 2, 1994, inclusive;
  3. December 23, 1994, through January 2, 1995, inclusive.
- B. The member was on leave of absence without compensation because of the city hall closure and not for any other reason.
- C. With respect to any member who rendered fewer than one thousand seven hundred thirty-nine hours of federated city service in the calendar year in which the city hall closure commenced, the city has paid into the retirement fund the contributions that would have been made to the fund by both the city and the member if the member had not been absent without compensation during the closure period or periods plus interest to the date the contributions are made calculated at the regular rate credited to contributions pursuant to Section 3.28.340.B.
- D. The city shall contribute to the retirement fund such amounts as are actuarially determined to be necessary to provide funding for all additional costs incurred by this retirement system because of the additional service credit provided to members by this section.

(Ord. 24807.)

### 3.28.690 Absence without compensation during periods of mandatory reduction in paid working time.

- A. Time during which a member was absent without compensation because the member is subject to a mandatory reduction in paid working time shall constitute "federated city service" in any case where all of the following requirements are satisfied:
1. The member was on leave of absence without compensation because of the mandatory reduction in paid working time and not for any other reason.
  2. With respect to any member who rendered fewer than one thousand seven hundred thirty-nine hours of federated city service in the calendar year in which the mandatory reduction in paid working time is in effect, the city and member have paid into the retirement fund the contributions that would have been made to the fund by both the city and the member if the member had not been absent without compensation during the mandatory reduction in paid working time.

- B. The city and the member shall make their respective contributions to the retirement fund as if the member had not been absent without compensation during the mandatory reduction in paid working time.

(Ord. 28603.)

## Part 6

### MEMBER CONTRIBUTIONS

#### Sections:

- |          |   |
|----------|---|
| 3.28.700 | Normal rate of contribution - Described - Amount.   |
| 3.28.710 | Normal rate of contribution - Determination.  |
| 3.28.720 | Normal rate of contribution - Initial rate.   |
| 3.28.730 | Prior service rate of contribution - Described - Amount.  |
| 3.28.740 | Prior service rate of contribution - Determination.   |
| 3.28.750 | Prior service rate of contribution - Initial rate.  |
| 3.28.755 | Additional employee contributions.  |
| 3.28.760 | Payroll deductions and other collections.   |
| 3.28.765 | City pickup of member contributions.  |
| 3.28.770 | Contributions - Individual account requirements.  |
| 3.28.780 | Return of contributions.  |
| 3.28.785 | Transfer of accumulated contributions.  |
| 3.28.790 | Redeposit of withdrawn contributions.   |
| 3.28.800 | Accumulated contributions upon reinstatement and return to federated city service following service or disability retirement under the Chapter 3.24 system. |
| 3.28.810 | Accumulated contributions upon reinstatement and return to federated city service following service or disability retirement under Chapter 3.28 system.     |

**3.28.700 Normal rate of contribution -  
Described - Amount.**

Except as may be otherwise provided elsewhere in this Chapter 3.28, all members of this system must make monthly (or biweekly, if compensation is paid biweekly by the city) normal contributions to this system. The normal contribution required of a member for each month (or for each two weeks, if compensation is paid biweekly by the city) shall be a percentage of compensation earned (or of "compensation earnable" when so required by other provisions of this Chapter 3.28) by him in such period. Said percentage is hereinafter referred to as members' "normal rate of contribution". Said rate shall be the same for all members.  
(Prior code § 2904.1250.)

**3.28.710 Normal rate of contribution -  
Determination.**

The normal rate of contribution required of members shall be such that, based on interest and mortality tables and other relevant actuarial data, the total amount of normal contributions which will be required of members under the provisions of this chapter will be sufficient to pay, when due, three-elevenths of the amount of all pensions, allowances and other benefits which are and will become payable under this system on account or because of current service rendered on or after July 1, 1975; provided and excepting, however, that if and when, from time to time, the members' normal rate of contribution is hereafter amended or changed, the new rate shall not include any amount designed to thereafter recover from members or return to members the difference between the amount of normal contributions theretofore actually required to be paid by members and any greater or lesser amount which, because of amendments hereafter made to this system or as a result of experience under this system, said members should have theretofore been required to pay in order to make their normal contributions equal three-elevenths of the abovementioned pensions, allowances and other benefits which are or will become payable on account or because of current service rendered on or after July 1, 1975, and before the effective date of the new rate.  
(Prior code § 2904.1251.)

**3.28.720 Normal rate of contribution - Initial  
rate.**

- A. Until amended, revised or changed by the retirement board in accordance with other provisions of this Chapter 3.28, the members'

normal rate of contribution on or after July 1, 1975, shall be four and seventy-nine hundredths percent of earned compensation, or of "compensation earnable" when so required by other provisions of this chapter.

- B. The normal rate of contribution set forth in this section is based on interest and mortality tables and other actuarial data in possession of the city on the date of enactment of this section, and is subject to change from time to time by the retirement board pursuant to other provisions of this chapter.

(Prior code § 2904.1252.)

**3.28.730 Prior service rate of contribution -  
Described - Amount.**

Except as may be otherwise provided elsewhere in this Chapter 3.28, all members of this system must make monthly (or biweekly, if compensation is paid biweekly by the city) prior service contributions to this system. The prior service contribution required of a member for each month (or for each two weeks, if compensation is paid biweekly by the city) shall be a percentage of compensation earned, or of "compensation earnable" when so required by other provisions of this chapter, by him in such period. Such percentage is hereinafter referred to as members' "prior service rate of contribution". Said rate shall be the same for all members.  
(Prior code § 2904.1253.)

**3.28.740 Prior service rate of contribution -  
Determination.**

The members' prior service rate of contribution shall be such that, based on interest and mortality tables and other relevant actuarial data, the total amount of prior service contributions which will be required of members will be sufficient to pay, when due, forty-two percent of the difference between:

- A. The amount of all pensions, allowances and other benefits which are and will become payable under this system on account of or because of prior service of members; and
- B. The amount of all pensions, allowances and benefits which would be and become payable to members on account of prior service (that is, on account of service rendered prior to July 1, 1975) under the provisions of the Chapter 3.24 retirement system as it existed on June 30, 1975, if all members of this system were members of said Chapter 3.24 retirement system instead of being members of this system; provided, however, that if and when, from time to time, the

members' prior service rate of contribution is hereafter amended or changed, the new rate shall not include any amount designed to thereafter recover from members or return to members the difference between the amount of members' prior service contributions theretofore actually required to be paid by members and any greater or lesser amount which, because of amendments hereafter made to this system or as a result of experience under this system, said members should have theretofore been required to pay in order to make their prior service contributions equal forty-two percent of the difference specified above.

(Prior code § 2904.1254.)

### 3.28.750 Prior service rate of contribution - Initial rate.

Until amended, revised or changed pursuant to the provisions of this Chapter 3.28, the members' prior service rate of contribution, on or after July 1, 1975, shall be one and fifty-four hundredths percent of earned compensation, or of "compensation earnable" when so required by other provisions of this Chapter 3.28.

(Prior code § 2904.1255.)

### 3.28.755 Additional employee contributions.

Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit.

(Ord. 28752.)

### 3.28.760 Payroll deductions and other collections.

The retirement board shall furnish the director of finance the rates of contribution for members and the amounts of any other contributions payable by any member or members. The director of finance shall apply such rates of contribution to the earned compensation (or "compensation earnable" where applicable) of each member, and deduct from such compensation the contributions so determined and payable by each member. All other contributions authorized to be made or required of members shall be paid by such members to the director of finance. The director of finance shall furnish to the retirement board, upon its request therefor, a statement of such contributions so deducted or credited with respect to each member, together with such other information as

the board may require. All contributions shall be placed in the retirement fund.

(Prior code § 2904.1256.)

### 3.28.765 City pickup of member contributions.

- A. For the purposes of this section, contributions "picked up" by the city means contributions to this system which are designated as employee contributions but are treated as employer contributions for income tax purposes as authorized by Section 414(h)(2) of the Internal Revenue Code (26 U.S.C.A. 414(h)(2)).
- B. Notwithstanding any other provision of law, the city may pick up, for the sole and limited purpose of deferring taxes as authorized by Section 414(h)(2) of the Internal Revenue Code (26 U.S.C.A. 414(h)(2)) and Section 17501 of the California Revenue and Taxation Code, all or a portion of the contributions required to be paid by a member of this system.
- C. Nothing herein shall be construed to mean that any contributions so picked up by the city are to be treated as city contributions for any purpose other than the sole and limited purpose specified herein. Any contributions so picked up by the city shall be paid into the retirement fund and shall be treated in the retirement fund in the same manner as such contributions would be treated if they had not been picked up by the city. The member shall have no right to receive such picked-up contributions directly but instead they must be paid to the retirement fund.
- D. Subject to applicable laws relating to meet and confer requirements, the city shall retain the authority periodically to increase, reduce or eliminate the pick up by the city of all or a portion of the contributions required to be paid by a member of this system.

(Ords. 22458, 25732, 26006, 28885.)

### 3.28.770 Contributions - Individual account requirements.

- A. Each member's normal contributions, including those made under the Chapter 3.24 system and those made under this system, shall be credited by the director of finance to an individual account kept for such member. Such account shall also show any and all withdrawals or redeposits of normal contributions, if any, made by the member pursuant to the provisions of the Chapter 3.24 retirement system or this system. The total normal contribution so credited to a member,

plus interest, if any, on such contributions which has been credited to such account, less all such contributions which have been withdrawn and not redeposited, shall be deemed, unless and except as may be otherwise provided by other provisions of this system, to be the accumulated normal contributions of such member in this system.

- B. Each member's prior service contributions, made on or after July 1, 1975 under the provisions of this system, also shall be credited by the director of finance to an individual account kept for such member. Such account shall also show all withdrawals of prior service contributions, if any, made by such member pursuant to the provisions of this system. The total prior service contributions thus credited to a member, plus interest if any on such contributions which has been credited to such account, less withdrawals, shall be deemed, unless and except as may be otherwise provided by other provisions of this system, to be the accumulated prior service contributions of such member in this system.
- C. Each member's additional contributions made on or after July 1, 2010 under the provisions of this system, also shall be credited by the director of finance to an individual account kept for such member. Such account shall also show all withdrawals of additional contributions, if any, made by such member pursuant to the provisions of this system. The total additional contributions thus credited to a member, plus interest if any on such contributions which has been credited to such account, less withdrawals, shall be deemed, unless and except as may be otherwise provided by other provisions of this system, to be the accumulated additional contributions of such member in this system.
- D. Payment of salaries and wages, less contributions required of a member, is in full discharge of all claims and demands whatsoever for the services rendered by the members during the periods covered by such payment, except the benefits afforded by the provisions of this chapter.

(Prior code § 2904.1257; Ord. 28752.)

### 3.28.780 Return of contributions.

- A. Except as otherwise provided in Sections 3.28.580, 3.28.590, 3.28.785, and 3.28.2420 of this chapter, if the membership herein of a member of this system is terminated for any reason other than death or retirement, the member shall be paid, within six months after the

date of such termination, all of his or her accumulated normal contributions, all of his or her accumulated prior service contributions and all of his or her accumulated additional contributions. In any case, under the terms of this plan where a person is entitled to a return of employee contributions, such return of contributions shall include an amount equal to the amount of the employee contributions to the medical benefits account plus interest accrued thereon at the rate of two percent per annum; provided, however, that no such return of contributions shall be paid from the medical benefits account.

- B. Anything elsewhere in this Chapter 3.28 to the contrary notwithstanding, if during a member's employment with the city, the member is required to or elects to become a member of any other retirement system supported in whole or in part by public funds, or is required to or elects to discontinue such federated city service as qualifies him or her for membership in this system and thereafter renders city service other than federated city service, such member shall be considered as having resigned from federated city service and, except as otherwise provided in Sections 3.28.580, 3.28.590, 3.28.785, and 3.28.2420, to have terminated membership in this system, as of the date he or she becomes a member of said other system or ceases to render said federated city service as aforesaid.
- C. Except as provided in Section 3.28.785, upon termination of a member's membership in this system for any reason other than death or retirement, the member, and any and all other persons or estates who might otherwise be entitled to any rights or benefits under this system because of such member's membership, shall thereupon cease to have or be entitled to any rights or benefits under this system.
- D. If on or after March 28, 2005, the member is to receive a distribution of an eligible rollover distribution, with a present value greater than one thousand dollars, and if a member does not elect to have such distribution paid directly to an eligible retirement plan specified by member in a direct rollover or to receive the distribution directly, then the system shall pay the distribution in a direct rollover to an individual retirement plan designated by the board in accordance with Section 401(a)(31)(B) of the Internal Revenue Code and IRS Notice 2005-5.

(Prior code § 2904.1258; Ords. 24682, 27838, 28752, 28885.)

**3.28.785 Transfer of accumulated contributions.**

- A. In the event a person's membership in this system is terminated because the person transfers, without a break in service, to a position that qualifies the person for membership in the police and fire department retirement plan and the person thereby becomes a member of such plan, the person may elect to leave his or her accumulated contributions on deposit in the retirement fund or may elect to have all of his or her accumulated contributions, with accrued interest thereon, transferred to the police and fire department retirement fund in accordance with the provisions of the police and fire department retirement plan.
- B. If a person described in Subsection A. elects to leave his or her accumulated contributions on deposit in this retirement fund, the person shall have no right to a refund of contributions until such person separates from city service. If the person elects to leave accumulated contributions on deposit in this retirement fund, subsequently separates from city service, and does not meet the requirements of Section 3.28.580, Section 3.28.590, or Section 3.28.2420, then within six (6) months of such person's separation from city service, all of his or her accumulated contributions and the interest accrued thereon shall be paid to the person.
- C. If the accumulated contributions and accrued interest of a person described in Subsection A. are transferred to the police and fire department retirement fund, such person's membership in this system shall terminate and thereafter the member, and any and all other persons or estates who might otherwise be entitled to any rights or benefits under this system because of such member's membership, shall thereupon cease to have or be entitled to any rights or benefits under this system.

(Ord. 27838.)

**3.28.790 Redeposit of withdrawn contributions.**

- A. Except as provided in this Section 3.28.790 and in Section 3.28.2430, no person shall be entitled or permitted to repay or redeposit into the retirement fund or this system any accumulated contributions withdrawn by or returned to such person pursuant to the provisions of this chapter or of Chapter 3.24, nor to reacquire credit for any federated city service lost by such person

because of the withdrawal or return of such person's accumulated contributions.

- B. Upon any person becoming a member of this system pursuant to Section 3.28.430 or Section 3.28.450 or because of reemployment in a federated city service position, the retirement board shall cause written notice to be personally delivered or mailed to such member, informing such member of his or her rights under this section. If mailed, such notice shall be mailed to said member at the latest address as shown in the records of the human resources department of the city.
- C. If the member wishes to have the prior service which was lost by reason of the withdrawal of accumulated contributions recredited to him or her, the person shall file a written notice of election to redeposit with the secretary to the board within thirty days from and after the date that written notice of his or her rights under this section is mailed or delivered to the member. If the person does not file the notice of election to redeposit within such time, the member shall be deemed to have elected not to have such prior service credited to him or her.
- D. The member shall not be entitled to prior service credit under this section unless the member redeposits and pays into the retirement fund:
  - 1. All accumulated contributions previously withdrawn by or returned to said member; plus
  - 2. All additional interest which would have been earned by said member's contributions at the actual rate earned by the retirement fund under the provisions of this chapter or Chapter 3.24, whichever is applicable, as of the date he or she becomes a member of this system, if said accumulated contributions had not been withdrawn by or returned to said member; plus
  - 3. Interest on the unpaid balance of all such moneys from the date said member becomes a member of this system to the date all such moneys are fully redeposited and paid into the retirement fund, at the regular rate of interest established by the board which is in effect at the time said member elects to redeposit the withdrawn or returned accumulated contributions.
- E. Subject to any limits on annual contributions imposed by Section 415 of the Internal Revenue Code of 1986, as amended, any member who

elects to redeposit and pay into the retirement fund the moneys specified in Subsection D, may redeposit and pay said moneys:

1. In one lump sum within sixty days from and after the date said member files with the secretary of the retirement board his or her written notice of election to redeposit; or
  2. For elections made on or before January 31, 2011, in installments, paid pre-tax over a period of time not to exceed the number of monthly installments or biweekly installments approved by the board, all payable within the time and in the manner determined by the board; or
  3. For elections made on or after February 1, 2011, in installments, paid post-tax over a period of time not to exceed the number of monthly installments or biweekly installments approved by the board, all payable within the time and in the manner determined by the board; or
  4. A combination of a lump sum and installments.
- F. If the member elects to redeposit and pay the contributions in pre-tax installments or if the member elects to make the lump sum payment by pre-tax payroll deduction, the member shall execute a binding irrevocable payroll authorization form authorizing the payment of the redeposit by payroll deductions. The payroll authorization form shall be filed with the director of finance within thirty days from and after the date that written notice of his or her rights hereunder is delivered or mailed to said member. If the member does not file the payroll authorization form within such time, the member shall be deemed to have elected not to redeposit and pay the contributions by payroll deduction. The election to redeposit accumulated contributions in the retirement fund by pre-tax payroll deduction and the authorization to redeposit by pre-tax payroll deductions shall be irrevocable. During the time the pre-tax irrevocable election is in effect, no direct payments from the member to the retirement fund shall be made by the member or accepted by the system.
- G. The election to purchase credit for prior police and fire service through post-tax payroll deductions and the authorization to make payments by post-tax payroll deductions shall be revocable. During the time the revocable election

is in effect, the member may make additional direct payments to the retirement fund.

- H. All contributions under Subsections E.2. and G. shall be treated as pre-tax salary reductions pursuant to Internal Revenue Code Section 414(h)(2).
- I. If a member elects to redeposit and pay the moneys specified in Subsection D. and subsequently does redeposit and pay said moneys as provided in this section, the member shall be credited under this system for all the service for which he or she lost credit upon the withdrawal or return of his or her accumulated contributions.
- J. If a member elects to redeposit and pay said moneys but fails to complete the redeposit, then:
1. If the failure to complete the redeposit is because of death while in federated city service and before retirement, the member shall be credited with the amount of service which is determined by the board to be attributable to the amount of accumulated contributions redeposited as of the date of the member's death.
  2. If the failure to redeposit is for any reason other than the death of the person prior to retirement, any amounts redeposited and paid pursuant to such election shall be credited to the member's accumulated normal contributions account but the member shall receive no credit for any service lost by him or her because of the previous withdrawal or return of accumulated contributions.

(Prior code § 2904.1258b; Ords. 22262, 26006, 28885.)

**3.28.800 Accumulated contributions upon reinstatement and return to federated city service following service or disability retirement under the Chapter 3.24 system.**

If a person who has been retired for service or disability under the Chapter 3.24 retirement system is reinstated to and returns to federated city service and becomes a member of this system pursuant to the provisions of Section 3.28.410 or 3.28.420, his accumulated contributions in this system, as of the date he becomes a member of this system, shall be deemed to be an amount which is the actuarial equivalent of his annuity, under the Chapter 3.24 retirement system, at that time, as based on a disabled life in the case of a person retiring from disability



retirement, but not exceeding the amount of his accumulated contributions at the time of his retirement under the Chapter 3.24 system, and he shall be credited with such amount of accumulated contributions as of said time. However, for the purpose only of qualifying for benefits under this system, his accumulated contributions in this system shall never be deemed to be less than five hundred dollars.

(Prior code § 2904.1259.)

**3.28.810 Accumulated contributions upon reinstatement and return to federated city service following service or disability retirement under Chapter 3.28 system.**

If a person who has been retired for service or disability under the provisions of this Chapter 3.28 system is reinstated to and returns to federated city service and again becomes a member of this system pursuant to other provisions of this chapter, his accumulated contributions in this system, as of the date he again becomes a member of this system, shall be deemed to be the amount, if any, by which his accumulated contributions in this system, as of the date he formerly retired under this system, exceeds the total amount of retirement allowances theretofore received by him under this system. However, for the purpose only of qualifying for benefits under this system, his accumulated contributions in this system shall never be deemed to be less than five hundred dollars.

(Prior code § 2904.1260.)

**Part 7**

**CITY CONTRIBUTIONS**

**Sections:**

- 3.28.850 Regular current service rate - Described - Amount.
- 3.28.860 Regular current service rate - Determination.
- 3.28.870 Regular current service rate - Initial rate.
- 3.28.880 Current service deficiency rate - Determination.
- 3.28.890 Prior service contributions - Described - Amount.

3.28.900 Prior service contributions - Determination.

3.28.910 Prior service contributions - Initial rate.

3.28.920 City contributions for certain former members of police and fire department retirement plan.

3.28.925 Additional costs borne by city.

3.28.930 No credit to city upon withdrawal of member's accumulated contributions.

3.28.940 Time of payment of city contributions.

3.28.950 Administrative costs of system.

3.28.955 Offset to city for additional employee contributions.

**3.28.850 Regular current service rate - Described - Amount.**

Except as otherwise provided by other provisions of this Chapter 3.28, the city must make, after July 1, 1975, monthly (or biweekly if members contribute biweekly) current service contributions to this system. The current service contributions required of the city for each such period shall be a percentage of compensation earned, or of "compensation earnable" when so required by other provisions of this Chapter 3.28, by members in such period. Said percentage shall consist of the sum of two rates, the first being the one which is hereinafter referred to as "city's regular current service rate of contribution", and the second being the one which is hereinafter referred to as "city's current service deficiency rate of contribution".

(Prior code § 2904.1300.)

**3.28.860 Regular current service rate - Determination.**

The city's regular current service rate of contribution shall be such that the amount of contributions paid by the city under such rate for each month (or two weeks, if members contribute biweekly) of current service for which the rate is imposed, as compared to the amount of normal contributions required of members for each such period of current service, shall be in the ratio of eight for the city to three for members.

(Prior code § 2904.1301.)

**3.28.870 Regular current service rate - Initial rate.**

A. Until amended, revised or changed by the retirement board in accordance with other

provisions of this Chapter 3.28, the city's regular current service rate of contribution, on and after July 1, 1975, shall be twelve and seventy-seven hundredths percent of earned compensation, or of "compensation earnable" when so required by other provisions of this Chapter 3.28.

- B. The initial rate established by this section is based on interest and mortality tables and other actuarial data in possession of the city on the date of enactment of this section and is subject to change from time to time by the retirement board pursuant to other provisions of this Chapter 3.28. (Prior code § 2904.1303.)

**3.28.880 Current service deficiency rate - Determination.**

The city's current service deficiency rate of contribution shall be such as may hereafter be necessary to make up, over a period of thirty years, any existing deficiency in the amounts of current service contributions theretofore contributed by members and by the city for the payment of the cost of all allowances and other benefits which are or will become payable to members on account of current service rendered before the effective date of the latest deficiency rate, such deficiency being that resulting from amendments hereafter made to this system or as a result of experience under this system. Until the amount accumulated in the retirement fund from contributions of members and the city on account of current service equals the present value of all amounts thereafter payable from the retirement fund on account of current service, the city shall make monthly (or biweekly, if members contribute biweekly) contributions, to make up any deficiency, at the current service deficiency rate established by the retirement board. Such rate shall be established and from time to time changed by the retirement board, whenever necessary, to accomplish the above-specified objective.

(Prior code § 2904.1302.)

**3.28.890 Prior service contributions - Described - Amount.**

Except as may be otherwise provided elsewhere in this Chapter 3.28, the city must make monthly (or biweekly, if members contribute biweekly) prior service contributions to this system. The prior service contribution for each such period shall be a percentage of compensation earned, or of "compensation earnable" when so required by other provisions of this Chapter 3.28, in such period. Said percentage is

hereinafter referred to as "city's prior service rate of contribution".

(Prior code § 2904.1304.)

**3.28.900 Prior service contributions - Determination.**

The city's prior service rate of contribution shall be such that, based on interest and mortality tables and other relevant actuarial data, the sum of the total amount of city's prior service contributions which will be required of the city under the provisions of this Chapter 3.28, plus the total amount of prior service contributions which will be required of members under the provisions of this chapter, plus the total amount of all prior service contributions made by the city pursuant to the provisions of the Chapter 3.24 retirement system, will be sufficient to pay, when due, all pensions, allowances and other benefits which are or will become payable under this system on account of prior service rendered prior to July 1, 1975.

(Prior code § 2904.1305.)

**3.28.910 Prior service contributions - Initial rate.**

- A. Until amended, revised or changed by the retirement board in accordance with other provisions of this Chapter 3.28, the city's prior service rate of contribution, on and after July 1, 1975, shall be three and sixty-nine hundredths percent of earned compensation, or of "compensation earnable" when so required by other provisions of this chapter.
- B. The initial rate established by this section is based on interest and mortality tables and other relevant actuarial data in the possession of the city on the date of enactment of this section and is subject to change from time to time by the retirement board pursuant to other provisions of this chapter.

(Prior code § 2904.1306.)

**3.28.920 City contributions for certain former members of police and fire department retirement plan.**

If a member who becomes such after July 1, 1975, becomes entitled to receive credit, pursuant to Section 3.28.650, for service formerly credited to him under a city police and fire department retirement plan specified in said Section 3.28.650, the city shall contribute to the retirement fund an amount equal to the sum of:

- A. An amount which, when added to the amount of accumulated contributions of the member which are transferred from the police and fire department plan into the retirement system pursuant to said Section 3.28.650, will equal the amount of contributions which said member would have been required to pay under the Chapter 3.24 retirement system for service rendered prior to July 1, 1975, and under this system for service rendered on or after July 1, 1975, had he been a member of said systems from the date he became a member of the police and fire department retirement plan to the date he becomes a member of this system;
- B. An amount which, when added to the amount of city contributions which are transferred from the police and fire department retirement plan into this system pursuant to said Section 3.28.650, will be equal to the contributions which the city would have been required to pay under the Chapter 3.24 retirement system for service rendered prior to July 1, 1975, and under this system for service rendered on or after July 1, 1975, had he been a member of said systems, in lieu of being a member of the police and fire department plan, from the date he became a member of the police and fire department retirement plan to the date he becomes a member of this system.

(Prior code § 2904.1307.)

### 3.28.925 Additional costs borne by city.

- A. The city shall bear and pay for all additional costs incurred by this retirement system because of the benefits provided by the provisions of Section 3.28.1110.A.3. or Section 3.28.1570.C. to any city officers or employees which would not have been provided absent the adoption of said sections.
- B. The city shall bear and pay for all additional costs incurred by this retirement system because of the medical insurance benefits provided to any person described in subsections B. or C. of Section 3.28.1950 which would not have been provided absent the adoption of said sections.

(Ords. 22314, 23485, 24347.)

### 3.28.930 No credit to city upon withdrawal of member's accumulated contributions.

If the federated city service of a member is discontinued by reason of resignation or discharge, or by reason of layoff or leave of absence deemed by the

board to have resulted in permanent discontinuance (and in the latter case, as of the date of determination by the board that the discontinuance is permanent), or if the disability retirement of a member is followed by cessation of the disability and by cancellation of the disability allowance but such member does not return to federated city service, and such member withdraws all or part of his accumulated normal contributions and interest thereon, and/or all or part of his prior service contributions and interest thereon, then in such event the city shall not receive a refund of its contributions made for such member nor receive a credit for such contributions against other contributions required to be made by the city. (Prior code § 2904.1308; Ord. 20276.)

### 3.28.940 Time of payment of city contributions.

- A. Such monthly or biweekly contributions as are required of the city by the provisions of this Part 7 shall be paid by the city within ten (10) days from and after the end of the month or two-week period for which they are made.
- B. In lieu of making the monthly or biweekly contributions specified in this Part 7 for the pay periods commencing with the third pay period in fiscal year 2008-09, the city shall have the option to make, on or before August 1, 2008, an advance lump sum payment of the city's contributions to the medical benefits account and the retirement fund. The amount of such advance lump sum payment for fiscal year 2008-09 shall be as determined by the board to be actuarially equivalent to the monthly or biweekly payments that would otherwise have been the city's required contributions to the medical benefits account and the retirement fund for the pay periods commencing with the third pay period in fiscal year 2008-09.
- C. Commencing with fiscal year 2009-10, the city shall have an annual option to select the periodic basis on which city contributions to the medical benefits account and to the retirement fund for that fiscal year will be paid; provided that such payment schedule shall be no less frequent than quarterly. Except as may otherwise be agreed to by the board, the notice of intent to exercise the option, including the periodic basis selected and the payment date(s) (the "notice of intent"), shall be provided by the city manager to the board on or before April 30th of the fiscal year prior to the fiscal year in which city may wish to exercise the option. The amount of the periodic payment(s)

contained in city's notice of intent shall be as determined by the board to be actuarially equivalent to the monthly or biweekly payment that would otherwise have been required.

- D. In the event that written notice of intent to exercise the option to select an alternative periodic payment schedule, has not been given by the city manager to the board on or before April 30th, or such other date as may be approved by the board, of each fiscal year, or if subsequent to the giving of such notice and prior to the commencement of the fiscal year, city elects not to exercise the option to select an alternative periodic payment schedule, city's payment of the city's contributions to the medical benefits account and to the retirement fund shall be made monthly or biweekly as otherwise specified in this Part 7.
- E. Such alternative periodic payments as are made by the city pursuant to the provisions of this Part 7 shall be paid by the city within ten days of the payment date(s) specified in city's notice of intent.
- F. No later than the end of the second pay period in the fiscal year immediately following a fiscal year in which city has made a lump sum payment as specified in paragraph B. and C., city shall provide to the board a statement showing the actual amount of the city's payroll for members of the system for the prior fiscal year. The board shall then determine whether the lump sum advance payment(s) and the payment(s) that would otherwise have been required in the absence of the lump sum advance payment(s) are actuarially equivalent. The city shall pay any underpayment by the earlier of ten days following receipt of the board's notice of determination or city's next contribution due date. The city shall receive credit for any overpayment in the form of an offset against the next payment(s) due by the city.
- G. In the event that a city elected lump sum payment is made later than the payment date specified in the city's notice of intent, city's contribution to the medical benefits account and to the retirement fund will be recalculated by the board's actuary, at the city's expense, to reflect the timing difference. The city will pay the difference within ten days of the date that the board's notice of the amount due is received.
- H. Any late payment to be made later than ten days after the payment date specified in the city's

notice of intent is subject to approval by the board.

(Prior code § 2904.1310; Ord. 28332.)

#### 3.28.950 Administrative costs of system.

All administrative costs of this system, as determined and approved by the board, including staff salaries and indirect labor costs, shall be borne by and paid from the retirement fund. The payment of costs of staff salaries and indirect labor from the retirement fund shall be subject to such limitations on said costs as may be agreed upon by the city and the employee organizations representing members of this system and set forth in the appropriate memoranda of agreement. Costs for staff salaries and indirect labor in excess of said limitations, if any, shall be paid by the city.

(Prior code § 2904.1309; Ords. 20066, 20848, 21165, 21242, 22263, 23433.)

#### 3.28.955 Offset to city for additional employee contributions.

Notwithstanding any other provision of this Part 7, the city shall be entitled to an offset of a percentage, as is determined appropriate by the actuary for the federated city employees retirement system, of the additional employee retirement contributions that are made under Section 3.28.755 against the retirement contributions that the city would otherwise be required to make under this Part 7.

(Ord. 28752.)

### Part 8

#### BENEFITS GENERALLY

##### Sections:

- 3.28.990 Compensation limitation.
- 3.28.995 Benefit limitations.
- 3.28.1000 Benefits for portions of years.
- 3.28.1010 Annual allowances payable in installments.
- 3.28.1015 Minimum distribution requirements.
- 3.28.1020 Determining years of service in which member is entitled to credit in determining amount of benefits payable.
- 3.28.1025 Forfeitures.
- 3.28.1030 Assignment of rights and benefits.

- 3.28.1040 Integration of worker's compensation benefits.
- 3.28.1050 Release or relinquishment of rights and benefits - Assignments to city.
- 3.28.1060 Options for certain former employees of city health department and city communications department.
- 3.28.1070 Payment to member's estate of balance of accumulated contributions where benefits paid and payable under other provisions are less than such contributions.
- 3.28.1080 Vesting.
- 3.28.1090 Compliance with USERRA and the HEART Act.

**3.28.990 Compensation limitation.**

A. Notwithstanding any other law, except as provided in Subsection A.3 and B. below, for any person who becomes a member of this plan on or after January 1, 1996, the annual compensation taken into account under this plan shall be subject to the limitation set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended.

1. Effective with respect to plan years beginning on and after January 1, 1996, and before January 1, 2002, the annual compensation of a plan member which exceeds one hundred fifty thousand dollars (as adjusted for cost-of-living increases under Section 401(a)(17)(B) of the Internal Revenue Code) shall be disregarded for purposes of computing employee contributions to or benefits due from the retirement plan. Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of Section 414(g)(6) of the Internal Revenue Code shall apply, except that in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen before the close of the year.
2. Effective with respect to plan years beginning on and after January 1, 2002, the annual compensation of a plan member which exceeds two hundred thousand dollars

(as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Internal Revenue Code) may not be taken into account in determining benefits or employee contributions due for any plan year. "Annual compensation" means compensation during the plan year or such other consecutive twelve-month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than twelve months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve. If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

3. As used in this Subsection A.3., the term "eligible member" means a person who first became a member of the retirement plan prior to January 1, 1996. Pursuant to Section 13212(d)(3)(A) of OBRA '93, and the regulations issued under that Section, eligible members are not subject to the limits of Section 401(a)(17) of the Internal Revenue Code and this section.
- B. In the event Section 401(a)(17) of the Internal Revenue Code is repealed, amended or qualified, by statute or otherwise, to relieve all or any members of this plan described in Subsection A. from the limitation set forth in Section 401(a)(17) of the Internal Revenue Code, then for those members no longer subject to the limitation, the annual compensation taken into account under the plan shall be calculated without such limitation. (Ords. 25001, 28885.)

**3.28.995 Benefit limitations.**

- A. Notwithstanding any other law, except as provided in Subsections B. and E. below, the benefits payable to any person who becomes a member of this system on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code as applied (other than paragraph (b)(2)(G)) without regard to paragraph (b)(2)(F) of said Section 415.
- B. Effective January 1, 1990, this paragraph shall apply only to persons who became a member of this system prior to January 1, 1990. For purposes of this paragraph, these members are referred to as "qualified participants." For a qualified participant, the 415(b) limit shall not be less than the accrued benefit of the member under this system determined without regard to any amendment of the plan made after October 14, 1987.
- C. For purposes of the application of Section 415(b) of the Internal Revenue Code, actuarial equivalences shall be based on the applicable interest rate and annuity tables as provided in Subsection E. below.
- D. The limitation year or period shall be the calendar year.
- E. Basic 415(b) limitation.
  - 1. Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the retirement plan. In no event shall a member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.
  - 2. For purposes of Section 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in Section 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be determined in accordance with treasury regulations.
- F. Adjustments to Basic 415(b) limitation for form of benefit.
  - 1. If the benefit under the plan is other than the form specified in Subsection E.2., then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed by treasury regulations.
  - 2. If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii) that takes into account the additional benefits under the form of benefit as follows:
    - a. For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code does not apply (a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:
      - i. The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member; or
      - ii. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2008, the applicable mortality tables described in Treasury Regulation Section

- 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2007, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or
- b. For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code applies (such as a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:
- i. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence;
  - ii. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a five and one-half percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2008, the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2007, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.
  - iii. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the thirty-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2008, the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2007, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.
- G. Benefits for which no adjustment of 415(b) limit is required. For purposes of this section, the following benefits shall not be taken into account in adjusting these limits:
1. Any ancillary benefit which is not directly related to retirement income benefits;
  2. That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;
  3. Any other benefit not required under Section 415(b)(2) of the Internal Revenue Code and treasury regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.

## H. Other adjustments in 415(b) limitation.

1. In the event the member's retirement benefits become payable before age sixty-two, the limit prescribed by this section shall be reduced in accordance with treasury regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (as adjusted) annual benefit beginning at age sixty-two, using assumptions described under the treasury regulations.
  2. In the event the member's benefit is based on at least fifteen years of service as a full-time employee of any police or fire department or on fifteen years of military service, the adjustments provided for in Subsection H.1. above shall not apply.
  3. The reductions provided for in Subsection H.1. above shall not be applicable to income received from a governmental plan (i) as a result of the recipient becoming disabled by reason of personal injuries or sickness or (ii) by the beneficiaries, survivors, or the estate of an employee as the result of the death of the employee.
- I. Less than ten years of participation adjustment for 415(b) limitations. The maximum retirement benefits payable to any member who has completed less than ten years of participation shall be the amount determined under Subsection E. multiplied by a fraction, the numerator of which is the number of the member's years of participation and the denominator of which is ten. The reduction provided by this subsection cannot reduce the maximum benefit below ten percent. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.
- J. Ten thousand dollar limit. Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed ten thousand dollars for the applicable limitation year and for any prior limitation year

and the employer has not any time maintained a qualified defined contribution plan in which the member participated.

## K. Effect of COLA without a lump sum component on 415(b) testing.

1. Effective on and after January 1, 2008, for purposes of applying the limits under Section 415(b) of the Internal Revenue Code (the "limit") to a member with no lump sum benefit, the following shall apply:

- a. A member's applicable limit shall be applied to the member's annual benefit in the member's first limitation year without regard to any cost of living adjustments under the provisions of Chapter 3.44;
- b. To the extent that the member's annual benefit equals or exceeds the limit, the member shall no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the limit; and
- c. Thereafter, in any subsequent limitation year, a member's annual benefit, including any cost of living increases under Chapter 3.44, shall be tested under the then applicable benefit limit including any adjustment to the Section 415(b)(1)(A) of the Internal Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations thereunder.

2. Effect of COLA with a lump sum component on 415(b) testing. On and after January 1, 2008, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit shall be applied taking into consideration cost of living increases as required by Section 415(b) of the Internal Revenue Code and applicable treasury regulations.

- L. Section 415(c) limitations on contributions and other additions. After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of forty thousand dollars (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) or one hundred percent of the member's compensation.
1. Annual additions are defined to mean the sum (for any year) of employer



contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

2. For purposes of applying Section 415(c) of the Internal Revenue Code and for no other purpose, the definition of compensation where applicable shall be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; provided, however, that member contributions picked up under Section 414(h) of the Internal Revenue Code shall not be treated as compensation.
3. Compensation shall be defined as wages within the meaning of Section 3401(a) of the Internal Revenue Code and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and shall be determined without regard to any rules under Section 3401(a) of the Internal Revenue Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Section 3401(a)(2) of the Internal Revenue Code).
  - a. However, for limitation years beginning after December 31, 1997, compensation shall also include amounts that would otherwise be included in compensation but for an election under Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4) of the Internal Revenue Code.
  - b. For limitation years beginning on and after January 1, 2008, compensation

for the limitation year shall also include compensation paid by the later of two and one-half months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

- i. The payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or
- ii. The payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; or
- iii. Payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the member at the same time if the member had continued employment with the employer and only to the extent that the payment is includible in the member's gross income.

Any payments not described in Subparagraph b. above are not considered compensation if paid after severance from employment, even if they are paid within two and one-half months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for

the employer rather than entering qualified military service.

An employee who is in qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code), shall be treated as receiving compensation from the employer during such period of qualified military service equal to (i) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service, or (ii) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve-month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

- c. Back pay, within the meaning of Treasury Regulation Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.
  4. If the annual additions for any member for a plan year exceed the limitation under Section 415(c) of the Internal Revenue Code, the excess annual addition shall be corrected as permitted under the employee plans compliance resolution system (or similar IRS correction program).
  5. For limitation years beginning on or after January 1, 2008, a member's compensation for purposes of this Subsection L. shall not exceed the annual limit under Section 401(a)(17) of the Internal Revenue Code.
- M. Service purchases under Section 415(n). Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive

service credit under the retirement plan, then the requirements of Section 415(n) of the Internal Revenue Code shall be treated as met only if:

1. The requirements of Section 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Section 415(b) of the Internal Revenue Code, or
2. The requirements of Section 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code.
3. For purposes of applying this section, the retirement plan shall not fail to meet the reduced limit under Section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this paragraph and shall not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this Section.
4. For purposes of this section the term "permissive service credit" means service credit:
  - a. Recognized by the retirement plan for purposes of calculating a member's benefit under the retirement plan;
  - b. Which such member has not received under the retirement plan; and
  - c. Which such member may receive only by making a voluntary additional contribution, in an amount determined under the retirement plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding Subparagraph b., may include service credited in order to provide an increased benefit for service credit which a member is receiving under the retirement plan.
5. The retirement plan shall fail to meet the requirements of this section if:
  - a. More than five years of nonqualified service credit are taken into account for purposes of this Subsection M.; or

- b. Any nonqualified service credit is taken into account under this Subsection M. before the member has at least five years of participation under the retirement plan.
- 6. For purposes of Paragraph 5., effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:
  - a. Service (including parental, medical, sabbatical, and similar leave) as an employee of the government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Section 415(k)(3) of the Internal Revenue Code);
  - b. Service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in Subparagraph a. of an education organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code which is a public, private, or sectarian school which provides elementary or secondary education (through grade twelve), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;
  - c. Service as an employee of an association of employees who are described in Subparagraph a.; or
  - d. Military service (other than qualified military service under Section 414(u) of the Internal Revenue Code) recognized by the retirement plan.

In the case of service described in Subparagraph a., b., or c., such service shall be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.
- 7. In the case of a trustee-to-trustee transfer after December 31, 2001, to which Section 403(b)(13)(A) of the Internal Revenue Code or Section 457(e)(17)(A) of the Internal Revenue Code applies (without regard to whether the transfer is made between plans maintained by the same employer):
  - a. The limitations of Paragraph 5. shall not apply in determining whether the transfer is for the purchase of permissive service credit; and
  - b. The distribution rules applicable under federal law to the retirement plan shall apply to such amounts and any benefits attributable to such amounts.
- 8. For an eligible member, the limitation of Section 415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the retirement plan as in effect on August 5, 1997. For purposes of this paragraph, an eligible member is an individual who first became a member in the retirement plan before January 1, 1998.
- N. Modification of contributions for 415(c) and 415(n) purposes. Notwithstanding any other provision of law to the contrary, the retirement plan may modify a request by a member to make a contribution to the retirement plan if the amount of the contribution would exceed the limits provided in Section 415 of the Internal Revenue Code by using the following methods:
  - 1. If the law requires a lump sum payment for the purchase of service credit, the retirement plan may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under Section 415(c) or 415(n) of the Internal Revenue Code.
  - 2. If payment pursuant to Paragraph 1. shall not avoid a contribution in excess of the limits imposed by Section 415(c) or 415(n) of the Internal Revenue Code, the retirement plan may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.
- O. Repayments of cashouts. Any repayment of contributions (including interest thereon) to the retirement plan with respect to an amount previously refunded upon a forfeiture of service credit under the retirement plan or another governmental plan maintained by the city shall not be taken into account for purposes of Section

415 of the Internal Revenue Code, in accordance with applicable treasury regulations.

P. Participation in other qualified plans; aggregation of limits.

1. The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code maintained by the city shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one plan.
2. The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in Section 414(i) of the Internal Revenue Code maintained by the city shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one plan.

Q. Reduction of benefits priority. Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.

(Ords. 23283, 27838, 28885.)

**3.28.1000 Benefits for portions of years.**

Whenever any person becomes entitled under the provisions of this system to any annual allowance, the annual allowance shall be deemed payable for each calendar year in which he is entitled to such allowance throughout the entire calendar year; provided and excepting, however, that if he is entitled to such allowance for only a portion of a calendar year, he shall be deemed entitled only to such portion of the

annual allowance for such calendar year as the number of days during which he was entitled to such allowance in such year bears to the total number of days in such year.

(Prior code § 2904.1350.)

**3.28.1010 Annual allowances payable in installments.**

Each annual allowance or portion thereof to which any person may become entitled under the provisions of this system during a calendar year shall be payable in equal monthly installments (or in equal biweekly installments if the city should ever elect to pay in biweekly installments); provided and excepting, however, that if the person entitled to any such allowance for any such installment period is entitled to it only for a portion of such installment period, he shall be entitled only to that portion of the allowance for such installment period as the number of days for which he is entitled to an allowance in such period bears to the number of days in such period.

(Prior code § 2904.1351.)

**3.28.1015 Minimum distribution requirements.**

A. Notwithstanding any other provision of this chapter, the distribution of a retirement benefit shall be subject to a good faith interpretation of the minimum distribution rules of Section 401(a)(9) of the Internal Revenue Code and the regulations promulgated thereunder, as applicable to a governmental plan within the meaning of section 414(d) of the Internal Revenue Code. In compliance with these provisions, payment of a member's retirement allowance shall commence no later than the later of the following:

1. The April 1 following the end of the calendar year in which the member attains age seventy and one-half; or
2. The April 1 following the end of the calendar year in which the member retires.

If a member fails to apply for retirement benefits by the later of either of those dates, the board shall begin distribution of the monthly benefit in the form provided under the applicable provision of Section 3.28.1110.

B. The member's entire interest must be distributed over the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member, or of the member and a designated beneficiary.

- C. For purposes of this section, the retirement plan pursuant to a qualified domestic relations order, may establish separate benefits for a member and nonmember.
- D. If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.
- E. If a member dies before required distribution of the member's benefits has begun, the member's entire interest must be distributed within five years of his death, unless it is to be distributed in accordance with the following rules:
  - 1. If the member's surviving spouse is the sole designated beneficiary, the member's remaining interest in the plan is distributed or begins to be distributed by December 31 of the calendar year immediately following the calendar year in which the member died or by December 31 of the calendar year in which the participant would have attained age seventy and one-half, if later, and if the surviving spouse dies before the distribution to the surviving spouse begins, this section shall be applied as if the surviving spouse were the plan member; or
  - 2. If the member's surviving spouse is not the sole designated beneficiary, the member's remaining interest is to be distributed over the life of the designated beneficiary or over a period not extending beyond the life expectancy of the designated beneficiary; and such distribution begins no later than December 31 of the calendar year immediately following the calendar year of the member's death.
- F. The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.
- G. The death and disability benefits provided by the retirement system are limited by the incidental benefit requirement set forth in Section 401(a)(9)(G) of the Internal Revenue Code and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. These incidental death and disability benefits include any lump sum death benefits and any disability benefits.

As a result, the total death or disability benefits payable may not exceed twenty-five percent of the cost for all of the members' benefits received from the retirement plan.

- H. Notwithstanding the other provisions of this rule or the provisions of the treasury regulations, benefit options may continue so long as the option satisfies Section 401(a)(9) of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.
- I. Notwithstanding any other provision of this chapter, if a member has elected an optional settlement under Part 13 of this chapter and the designated beneficiary is not the spouse of the member, the periodic amounts payable to the member and the designated beneficiary shall be adjusted only to the extent necessary to ensure that the minimum distribution requirements of Internal Revenue Code Section 401(a)(9) are satisfied.

(Ords. 27838, 28885.)

### 3.28.1020 Determining years of service in which member is entitled to credit in determining amount of benefits payable.

Whenever, in determining the amount of an allowance or other benefit payable under this system, consideration must be given to the years of federated city service to which a member is entitled to credit under this system, no consideration shall be given to number of years to which he is entitled to credit under this system for the purpose of qualification for benefits only and not for the purpose of determining the amount of benefits to which a person may become entitled hereunder.

(Prior code § 2904.1352.)

### 3.28.1025 Forfeitures.

- A. In the event of a forfeiture of benefits arising from separation from employment, death, or any other reason, the amount of such forfeiture shall remain in the retirement fund and shall not be applied to increase the benefits any member, former member or beneficiary of the plan would otherwise be entitled to receive prior to the termination of the plan.
- B. The amounts forfeited shall be used to reduce the city's contributions to the plan; provided, however, that the effect of forfeitures may be anticipated in the determination of the liabilities of the plan.

(Ord. 27838.)

**3.28.1030 Assignment of rights and benefits.**

- A. All rights or benefits which any person may have or may become entitled to in or under this system, or in or to any moneys in the system, are not assignable except as specifically provided in this chapter or as specified in Subsection B.
- B. Voluntary deductions which are permitted by rules and regulations approved by the board of administration of the federated city employees retirement system may be made from pension benefits payments where authorized in writing by the benefit payee.

(Prior code § 2904.1353; Ord. 29035.)

**3.28.1040 Integration of worker's compensation benefits.**

- A. No allowances or benefits payable under this system shall be modified because of any worker's compensation benefits which may become payable under the laws of the State of California to any member or to any recipient of any allowance or benefit payable under this system except as provided in subsection B. of this section.
- B. In the event a member is retired for a service-connected disability pursuant to Part 10 of this chapter and receives both a service-connected disability retirement allowance and a workers' compensation benefit for temporary disability, permanent disability or vocational rehabilitation temporary disability pursuant to Division 1 or Division 4 of the California Labor Code, then the service-connected disability retirement allowance shall be offset by the sum of all such workers' compensation benefits as follows:

1. The offset shall apply only to the following persons:
  - a. Those persons whose application for a service-connected disability retirement was filed, by any person authorized in Section 3.28.1230 to file such application, on or after July 13, 1986; and
  - b. Those persons retired on the retirement board's own motion, pursuant to Section 3.28.1220, on or after July 13, 1986.
2. The applicable amount of the workers' compensation benefits shall be converted to a monthly equivalent. The monthly service-connected disability retirement allowance shall be reduced by the workers' compensation benefit monthly equivalent.

3. The offset shall be in effect only during such time as concurrent retirement allowances and workers' compensation benefits are paid. In the case of the payment of a lump sum workers' compensation benefit (excluding payments for medical treatment), the offset shall apply only for such period of time as concurrent payments would have been made had the workers' compensation benefit been paid in installments.
4. In no case shall the offset reduce the service-connected disability retirement allowance to an amount less than the sum of the maximum retired member contributions for medical, dental, life, and accidental death insurance premiums, as determined by the city, plus one dollar. This limitation shall apply regardless of whether the retired member actually contributes toward the payment of such premiums.
5. No offset shall be made for permanent disability benefits paid to any retired member of this system who has received a workers' compensation permanent disability rating of one hundred percent.
6. The offset shall not apply with respect to workers' compensation benefits paid for any injury or illness which did not cause or contribute to the disability for which the service-connected disability retirement was granted.

(Prior code § 2904.1354; Ord. 22245.)

**3.28.1050 Release or relinquishment of rights and benefits - Assignments to city.**

- A. Anything elsewhere in this Chapter 3.28 or in any other part of the San José Municipal Code to the contrary notwithstanding, any right, title or interest which any member of this retirement system, or any other person or persons, may have or may claim to have in or to any retirement or other allowance or in or to any benefit or benefits whatsoever, or in or to any moneys whatsoever, or any other right, title or interest which any person or persons may have or claim to have, under or by virtue of the provisions of this retirement system, whether such right, title or interest is vested, contingent or otherwise, may be released, relinquished and given up by such member or by such other person or persons, or may be assigned to the City of San José or to the retirement system or retirement board by such member or other person or persons; and upon

such being done, the right, title or interest which is so released, relinquished, given up or assigned is and shall be deemed extinguished, the same as if such right, title or interest had never existed, and neither the city nor this retirement system or retirement board shall thereafter have any liability whatsoever with respect to the right, title or interest so released, extinguished or given up or assigned.

- B. However, if and to the extent that the city pays or gives any consideration, other than funds of this retirement system, for any abovementioned release, relinquishment, giving up or assignment, the amount or value of the consideration paid or given by the city for said release, relinquishment, giving up or assignment, or the actuarial value of the right, title or interest which is so released, relinquished, given up or assigned as of the date of such release, relinquishment, giving up or assignment, whichever is the lesser amount, shall be credited against and deducted from the amount of current service contributions which the city is required to pay into the retirement fund during the following calendar months until full credit therefor is thus received by the city.

(Prior code § 2904.1355.)

**3.28.1060 Options for certain former employees of city health department and city communications department.**

The provisions of this section apply only to former employees of the city health department and former employees of the city communications department who heretofore exercised the options given to them by the provisions of Part 21 or 22 of the Chapter 3.24 retirement system and who thereby became entitled to such rights as are given to them under said Part 21 or 22. Each of said persons who should become a member of this system shall have the right to elect, before or at the time he first applies for any benefits under this system, to become entitled to and to receive in lieu of any and all benefits which he or his survivors or any other person or estate may become entitled to under other sections of this Chapter 3.28, such benefits as he would be entitled to under the Chapter 3.24 retirement system, as it read on June 30, 1975, if he were still a member of the Chapter 3.24 system and service rendered and contributions paid by him while a member of this system were deemed to be service rendered and contributions paid by him under the Chapter 3.24 retirement system.

(Prior code § 2904.1356.)

**3.28.1070 Payment to member's estate of balance of accumulated contributions where benefits paid and payable under other provisions are less than such contributions.**

If in the event of the death before retirement of a member the sum of any and all moneys thereupon and thereafter paid or payable under other provisions of this system to any and all of his survivors and/or estate should be less than the amount of accumulated contributions and interest standing to his credit; or if in the event of his death after retirement the sum of any and all moneys theretofore paid or payable under other provisions of this system to such member because of his retirement plus the sum of any and all moneys thereupon and thereafter paid or payable under other provisions of this system to any and all of his survivors and/or estate should be less than the amount of accumulated contributions and interest standing to such member's credit, then in either of said events the difference between the total of said sums paid or payable under other provisions of this system and the amount of said accumulated contributions and interest shall be paid to said member's estate.

(Prior code § 2904.1357.)

**3.28.1080 Vesting.**

- A. A member shall be one hundred percent vested in his or her service retirement benefit upon attaining eligibility for a service retirement benefit under the applicable provisions of the retirement system.
- B. A plan member shall be one hundred percent vested in his or her accumulated contributions at all times.
- C. An affected plan member shall be one hundred percent vested in his or her accrued benefit, to the extent then funded, in the event the retirement system is terminated in whole or in part or contributions are completely discontinued.
- D. For purposes of this Section 3.28.1080 "vested" shall mean the nonforfeitable right to the benefit that the member has accrued.
- E. Nothing contained in this Section 3.28.1080 shall be construed or interpreted to limit modification of benefits, to the extent that such modification is otherwise allowed under federal and state law.

(Ord. 28885.)

**3.28.1090 Compliance with USERRA and the HEART Act.**

- A. Effective December 12, 1994, notwithstanding any other provision of the retirement system law, contributions, benefits and service credit with respect to qualified military service are governed by Section 414(u) of the Internal Revenue Code and the Uniformed Services Employment and Reemployment Rights Act of 1994.
- B. Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in 38 U.S.C. 43, to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a member in the retirement plan, are entitled to any additional benefits that the retirement plan would provide if the member had resumed employment and then died (as a non-service connected death) that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service must be counted for vesting purposes, but such period of service shall not be counted for benefit accrual purposes.
- C. Beginning January 1, 2009, to the extent required Section 414(u)(12) of the Internal Revenue Code, an individual receiving a differential wage payment (as defined under Section 3401(h)(2) of the Internal Revenue Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(Ord. 28885.)

**Part 9****RETIREMENT FOR SERVICE****Sections:**

- 3.28.1100 Eligibility.
- 3.28.1110 Voluntary retirement for service.
- 3.28.1120 Retirement of former member of Chapter 3.24 system who became a member under Section 3.28.400.

- 3.28.1130 Retirement of former member of Chapter 3.24 system who became a member under Section 3.28.410, 3.28.420 or 3.28.430.
- 3.28.1140 Service retirement of former member of Chapter 3.24, Part 4 system, at age fifty or more, with fifteen or more years of service.
- 3.28.1150 Election by former member of Chapter 3.24 system to receive service retirement allowance provided by Chapter 3.24 system in lieu of all benefits provided by other sections of this system.
- 3.28.1160 Retired member not to be reemployed in federated city service unless first reinstated or employed pursuant to Section 3.28.1190.
- 3.28.1170 Reinstatement from retirement.
- 3.28.1180 Reemployment of retired member to perform city services other than federated city services.
- 3.28.1190 Limited reemployment of retired person.

**3.28.1100 Eligibility.**

No person shall be retired for service under or pursuant to the provisions of this Chapter 3.28 unless he is eligible therefor under and pursuant to the provisions of this chapter.  
(Prior code § 2904.1400.)

**3.28.1110 Voluntary retirement for service.**

- A. Subject to other provisions of this Chapter 3.28, a member of this system shall be retired for service pursuant to this section, upon his or her written application therefor to the board of administration for the federated city employees retirement system, if:
  - 1. Such member has attained fifty-five or more years of age and is entitled under this system to credit for five or more years of federated city service rendered after he or she became and while he or she was a member of this system; or
  - 2. If such member has not attained fifty-five or more years of age but is entitled under this system to credit for thirty or more years of federated city service of which not less than



five years were rendered after he or she became and while he or she was a member of this system; or

3. If such member has attained fifty-five or more years of age and has rendered not less than two years of federated city service under this system and became a member of this system before April 15, 1991, pursuant to a transfer of a communications function from Santa Clara County to the City of San

José and without a break in service from county communications to a city communications classification and does not qualify under any other provisions of this chapter or Chapters 3.20 and 3.24.

- B. Subject to other provisions of this chapter, a member who is retired for service pursuant to the provisions of this section shall be entitled to receive, and shall be paid, from the retirement fund from and after the effective date of such member's retirement and during the remainder of his or her lifetime, an annual service retirement allowance equal to two and one-half percent of such member's final compensation times the number of years of federated city service for which such member is entitled to credit under the provisions of this system; provided and excepting, however, that said annual allowance shall never exceed a maximum of seventy-five percent of such member's final compensation.

(Prior code § 2904.1401; Ords. 21265, 21371, 22314, 23485.)

**3.28.1120 Retirement of former member of Chapter 3.24 system who became a member under Section 3.28.400.**

- A. Subject to other provisions of this Chapter 3.28, a member of this system who is not eligible for service retirement under and pursuant to the provisions of Section 3.28.1110 shall be retired for service pursuant to this section, upon his written application therefor to the retirement board, if he is a former member of the Chapter 3.24 retirement system who became a member of this system pursuant to the provisions of Section 3.28.400 and either:
1. He has attained fifty-five or more years of age and has accumulated contributions in the retirement fund amounting to five hundred dollars or more; or
  2. He has not attained fifty-five or more years of age but is entitled under this system to credit for thirty or more years of federated city service and his accumulated contributions in the retirement fund amount to five hundred dollars or more.
- B. Subject to other provisions of this chapter, a member who is retired for service pursuant to this section shall be entitled to receive, and shall be paid from the retirement fund, from and after the effective date of his retirement and during the

remainder of his lifetime, an annual service retirement allowance equal to two and one-half percent of his final compensation times the number of years of federated city service for which he is entitled to credit under the provisions of this system; provided and excepting, however, that said annual allowance shall never exceed a maximum of seventy-five percent of his final compensation.

(Prior code § 2904.1402; Ord. 21265.)

**3.28.1130 Retirement of former member of Chapter 3.24 system who became a member under Section 3.28.410, 3.28.420 or 3.28.430.**

- A. Subject to other provisions of this Chapter 3.28, a member of this system who is not eligible for service retirement under and pursuant to the provisions of Section 3.28.1110 or 3.28.1120 shall be retired for service pursuant to this section, upon his written application therefor to the retirement board if he is a former member of the Chapter 3.24 retirement system who became a member of this system pursuant to the provisions of Section 3.28.410, 3.28.420 or 3.28.430 and he either:
1. Has attained fifty-five or more years of age and his accumulated contributions in the retirement fund amount to five hundred dollars (\$500.00) or more; or
  2. He has not attained fifty-five or more years of age but is entitled under this system to credit for thirty or more years of federated city service and his accumulated contributions in the retirement fund amount to five hundred dollars or more.
- B. Subject to other provisions of this chapter, a member who is retired for service pursuant to this section shall be entitled to, and shall be paid, from the retirement fund, from and after the effective date of his retirement and during the remainder of his lifetime, an annual service retirement allowance which shall be equal to the sum of the following two annual allowances, as follows:
1. An annual allowance equal to two and one-half percent of his final compensation times the number of Years of federated city service rendered by him after he became and while he was a member of this system for which he is entitled to credit under this system; plus

2. An annual allowance equal to the unmodified annual service retirement allowance which he would be entitled to under the provisions of the Chapter 3.24 retirement system, if he had remained a member thereof and retired thereunder at the same age as that at which he is retiring pursuant to this section, with credit for the number of years of federated city service, other than those years of service which he rendered after he became a member of this system, for which he is entitled to credit under this system, and with his accumulated contributions equal to those credited to him in this retirement system because of federated city service rendered by him while he was a member of the Chapter 3.24 retirement system.

(Prior code § 2904.1403; Ord. 21265.)

**3.28.1140 Service retirement of former member of Chapter 3.24, Part 4 system, at age fifty or more, with fifteen or more years of service.**

- A. Subject to other provisions of this Chapter 3.28, a member of this system who is not eligible for service retirement under and pursuant to the provisions of Section 3.28.1110, 3.28.1120 or 3.28.1130 shall be retired for service pursuant to this section, upon his written application therefor to the retirement board, if he is a former member of the Chapter 3.24 retirement system who became a member of this system pursuant to Section 3.28.400, 3.28.410, 3.28.420 or 3.28.430, has attained fifty or more years of age, is entitled to credit under this system for fifteen or more years of federated city service, and, after having attained the age of fifty years, has been separated from federated city services because of a curtailment of or change in the manner of performing such service and not because of resignation, discharge or retirement and the retirement board has determined that his separation is of extended and uncertain duration and not the separation normally experienced by members in positions known at the time of employment to be of limited duration or on a seasonal or interim basis.

- B. Subject to other provisions of this Chapter 3.28, a member who retires for service pursuant to the provisions of this section shall be entitled to and

shall be paid, from the retirement fund, from and after the effective date of his retirement and during the remainder of his lifetime, an annual service retirement allowance determined at the written election of such member made upon the filing of an application for service retirement allowance. Such annual service retirement allowance shall, at such member's election, be either:

1. An annual allowance equal to two and one-half percent of his final compensation times the number of years of federated city service for which he is entitled to credit under the provisions of this system; or
2. An annual allowance which shall be equal to the sum of the following two annual allowances, to wit:
  - a. An annual allowance equal to two and one-half percent of his final compensation times the number of years of federated city service rendered by him after he became and while he was a member of this system; plus
  - b. An annual allowance equal to the unmodified annual service retirement allowance which he would be entitled to under the provisions of the Part 4 retirement system if he were still a member thereof and retired thereunder at the same age as that at which he is retiring pursuant to this section with credit for the number of years of federated city service, other than those years of service which he rendered after becoming a member of this system, for which he is entitled to credit under this system, and with accumulated contributions equal to those credited to him in this retirement system because of federated city service rendered by him while he was a member of the Chapter 3.24 retirement system.

(Prior code § 2904.1404; Ords. 19464, 21265.)

**3.28.1150 Election by former member of Chapter 3.24 system to receive service retirement allowance provided by Chapter 3.24 system in lieu of all benefits provided by other sections of this system.**

- A. A member of this system who is eligible to retire for service under the preceding sections of this

Part 9 may elect, if he was a former member of the Chapter 3.24 retirement system who became a member of this system pursuant to the provisions of Section 3.28.400, 3.28.410, 3.28.420 or 3.28.430 to receive until he dies, in lieu of any and all benefits to which he or his survivors or estate might otherwise be or become entitled to under other sections of this chapter because of such service retirement, or because of his death after retirement while on such service retirement, such service retirement allowance as he would be entitled to if he were still a member of the Chapter 3.24 system, as it existed on July 30, 1975, and retired thereunder for service, at the same age as that at which he is retiring pursuant to this section, with credit for the number of years of federated city service for which he is entitled to credit under this system and with accumulated contributions equal to those credited to him in this system. A person making such election shall also be entitled to any right which he would have had, if he had retired under the Chapter 3.24 system, under the optional settlements provisions of the Chapter 3.24 system, and, if he exercises any rights under such optional settlement provisions, his named beneficiary shall receive, on his death occurring while on such retirement, such benefits, if any, as such beneficiary should become entitled to under such optional settlement provisions because of his exercise of such rights.

- B. Upon exercising said election, said person loses all right to any and all other benefits which he might have or be or become entitled to under other sections of this Chapter 3.28 because of his retirement, and none of his survivors nor his estate shall have any right to any benefits under other sections of this chapter because of his death occurring while on such retirement, provided and excepting, however, that the special death benefit provided by Section 3.28.1620 shall still be payable on his death to his estate or named beneficiary.

(Prior code § 2904.1406; 3.28.1160; Ord. 21265.)

**3.28.1160 Retired member not to be reemployed in federated service unless first reinstated or employed pursuant to Section 3.28.1190.**

A person retired for service pursuant to any of the provisions of this Part 9 shall not be retained by the city to render any federated city service unless the person is first reinstated from service retirement pursuant to the provisions of this part, except:

- A. Where the person renders service as an independent contractor; or

- B. Where the person is reemployed pursuant to Section 3.28.1190.

(Prior code § 2904.1407; 3.28.1170; Ords. 21265, 26355.)

**3.28.1170 Reinstatement from retirement.**

- A. A person who has been retired for service pursuant to the provisions of this Part 9 may apply to the retirement board, in writing for reinstatement from such retirement for the purpose of reentering federated city service. The board may reinstate the person from retirement if it finds that his or her age at the date of his application is at least six (6) months less than seventy (70) years of age. Upon such reinstatement, said person may be reemployed by the city, in the same manner as it employs persons who have not been retired hereunder, to render federated city service.
- B. Upon reinstatement from service retirement as aforesaid, the service retirement allowance of the reinstated person shall be canceled forthwith, and the person shall again become a member of this plan as of the date of the reinstatement. Upon reinstatement the person shall regain credit for those years of service for which the person was entitled to credit as of the time he or she retired for service.

(Prior code § 2904.1408; 3.28.1180; Ords. 21265, 27838.)

**3.28.1180 Reemployment of retired member to perform city services other than federated city services.**

- A. If a person who has been retired for service pursuant to the provisions of this Part 9 is retained or reemployed by the city, other than as an independent contractor or pursuant to Section 3.28.1190, to render any service which is not federated city service, said person's service retirement allowance shall be suspended as of the effective date of such reemployment and shall remain suspended while the person is retained or reemployed to perform such service. Upon cessation of such reemployment, the person's service retirement allowance shall be reinstated.
- B. The provisions of this section shall not apply to the election or appointment of any retired person to the city council or to any board or commission of the city.

(Prior code § 2904.1409; 3.28.1190; Ords. 21265, 26355.)

**3.28.1190 Limited reemployment of retired person.**

- A. A person who has been retired under this system, for service or disability, may be employed by the city to perform city service on a temporary basis without reinstatement from retirement where the employment does not exceed one hundred twenty working days or nine hundred sixty hours, whichever is greater, in any payroll calendar year. For the purposes of this provision, "payroll calendar year" means the twelve-month period commencing on the first day of the first pay period for active city employees.
- B. The procedures for the employment of a retired person under this section shall be in accordance with the procedures set forth in the human resources administrative manual.
- C. A person who retired for disability shall be eligible for employment under this section only if employment is not available under Part 10A of this chapter.
- D. The employment of a person pursuant to this section shall not operate to reinstate the person as a member of this system. The person shall not earn service credit in this system for any period of such reemployment, nor shall either the person or the city make any contributions to this system on account of such employment.
- E. The employment of a person pursuant to this section shall not operate to terminate or suspend the retirement allowance otherwise payable to such person.
- F. A person employed pursuant to this section shall not be entitled to a disability retirement from the position in which the person is reemployed.
- G. If the Internal Revenue Service determines that a reemployment program such as that described in this section can not be implemented without placing a retirement system out of conformity with the qualified plan requirements of the Internal Revenue Code (Title 26 of the United States Code), this section shall become inoperative and any employment of a person pursuant to this section shall be terminated immediately.

(Ord. 26355.)

- 3.28.1220 Disability retirement - On motion of retirement board.
- 3.28.1230 Disability retirement - On application - Persons authorized.
- 3.28.1240 Time limitation applicable to board's motion and application.
- 3.28.1250 Medical examinations.
- 3.28.1260 Disability retirement - Conditions for granting.
- 3.28.1270 Determination as to whether disability is service-connected.
- 3.28.1280 Service-connected disability retirement - Amount of allowance.
- 3.28.1290 Nonservice-connected disability retirement - Eligibility.
- 3.28.1300 Nonservice-connected disability retirement - Allowance when member is eligible therefor under subsection A or B of Section 3.28.1290.

**Part 10**

**RETIREMENT FOR DISABILITY**

**Sections:**

- 3.28.1200 Eligibility.
- 3.28.1210 Definitions.

- 3.28.1310 Nonservice-connected disability retirement - Allowance when member is eligible therefor under subsection C of Section 3.28.1290.
- 3.28.1320 Election by former member of Chapter 3.24 system to receive disability retirement allowance provided by Chapter 3.24 system in lieu of certain Chapter 3.28 benefits.
- 3.28.1325 Reports of earnings from outside occupation.
- 3.28.1330 Deductions - Recipient's earnings from outside occupation.
- 3.28.1340 Deductions - Recipient's earnings from nonfederated city service.
- 3.28.1350 Recipient's reentry into federated city service in position and class of positions other than that from which he or she was retired for disability.
- 3.28.1360 Member not to receive both service retirement and disability retirement.
- 3.28.1370 Medical examination of recipients - Allowance cancellation conditions.
- 3.28.1380 Reinstatement to duty.
- 3.28.1390 Refusal to accept reinstatement.
- 3.28.1400 Recipient attaining age fifty-five to be deemed permanently disabled.
- 3.28.1410 Failure or refusal to submit to medical examination.
- 3.28.1420 Situations where member is not entitled to disability retirement or disability retirement allowance.
- 3.28.1430 Payment of disability allowances to constitute return and withdrawal of contributions.
- 3.28.1440 Failure to reinstate recipient of a disability allowance to duty on cessation of disability.

#### 3.28.1200 Eligibility.

No person shall be retired for disability under or pursuant to the provisions of this Chapter 3.28 unless he is eligible therefor under and pursuant to the provisions of this Part 10.  
(Prior code § 2904.1450.)

#### 3.28.1210 Definitions.

As used in this Part 10:

- A. "Disability," "incapacity for the performance of duty" and "incapacitated for the performance of duty," when used as a basis for retirement under this system, mean disability of a member, short of death, of permanent or extended and uncertain duration, occurring while such member is an employee of the city in the federated city service of the city, as a result of injury or disease (except that in case of a mental derangement the cause thereof, for purposes of this section only, shall be disregarded), which renders the member physically or mentally incapable of continuing to satisfactorily assume the responsibilities and perform the duties and functions of the position then held by him and of any other position in the same classification of positions to which the city may offer to transfer him, as determined by the retirement board on the basis of competent medical opinion. It does not mean mere physical or mental inability to assume said responsibilities or perform said duties.
- B. "Nonservice-connected disability" means a disability, as above defined, of a member, which is not a service-connected disability.
- C. "Service-connected disability" means a disability, as above defined, of a member which arises and results from an injury or disease arising out of and in the course of the federated city service, rendered by the member, for which he is entitled to credit under the provisions of this system.  
(Prior code §§ 2904.1451-2904.1453.)

#### 3.28.1220 Disability retirement - On motion of retirement board.

A member who is eligible to retire for disability may be retired for disability, pursuant to and subject to the provisions of this Chapter 3.28, on the retirement board's own motion with or without a request or application therefor being made by the member or any other person.  
(Prior code § 2904.1454.)

#### 3.28.1230 Disability retirement - On application - Persons authorized.

A member who is eligible to retire for disability shall be retired for disability, pursuant to and subject to the provisions of this Part 10, by the retirement board upon application being made therefor by any of the following persons:

- A. The city manager;
- B. The head of the office or department in which the member is or was last employed; or
- C. The member, or any authorized person on his behalf.

(Prior code § 2904.1455.)

**3.28.1240 Time limitation applicable to board's motion and application.**

Anything elsewhere to the contrary notwithstanding, the retirement board shall not retire a member for disability, either on its own motion or upon application being made therefor, unless it does so while the member is still in federated city service, or within four months after the member's discontinuance of such service, or during the continuance of the member's disability if it continues after he ceases to render federated city service.

(Prior code § 2904.1456.)

**3.28.1250 Medical examinations.**

- A. The retirement board on its own motion at any time may, and upon receipt of an application for disability retirement shall, order a medical examination of a member who is otherwise eligible to retire for disability to determine whether he is disabled or incapacitated for the performance of duty, and to determine whether such disability or incapacity for performance of duty is a service-connected or nonservice-connected disability in those situations where the member's eligibility for disability retirement, or the amount of disability retirement allowance to which the member may be entitled, is dependent upon such determination. Such medical examination shall be made by one or more physicians or surgeons appointed by the board or designated by the board's medical director.
- B. In addition, the member may submit a medical report from the member's own physician or surgeon. Where application for disability retirement is made by the member or on the member's behalf, a medical report by said member's private physician or surgeon may be submitted with the application. The board may require additional medical examinations or procure or require additional or other evidence before retiring a person for disability.
- C. All medical information under the control of the city and the member, including reports in

connection with workers compensation claims or proceedings to the extent permitted by law, shall be made available to the city's medical director and the retirement board upon their request.

(Prior code § 2904.1457; Ords. 19283, 26846.)

**3.28.1260 Disability retirement - Conditions for granting.**

If the medical reports and other available evidence and information show to the satisfaction of the retirement board that the member is incapacitated for the performance of his duty, and if such member is otherwise eligible to retire for disability pursuant to the provisions of this Part 10, the board shall forthwith retire him for disability.

(Prior code § 2904.1458.)

**3.28.1270 Determination as to whether disability is service - connected.**

If the medical examination and other available evidence and information show to the satisfaction of the retirement board that the disability is service-connected, it shall so find and declare. If the medical examination and other available information show to the satisfaction of the board that the disability is nonservice-connected, it shall so find and declare. Such finding and declaration shall govern in determining whether a disability is service-connected or nonservice-connected.

(Prior code § 2904.1459.)

**3.28.1280 Service-connected disability retirement - Amount of allowance.**

- A. Subject to other provisions of this Chapter 3.28, a member who, while he or she is an employee of the city in the federated city service is disabled and incapacitated for the performance of duty, may be retired by the retirement board pursuant to the provisions of this section for such disability, and shall be so retired upon application being made therefor, if said disability is a service-connected disability.
- B. Subject to other provisions of this chapter, any member retired pursuant to the provisions of this section because of a service-connected disability shall thereafter be paid from the retirement fund, while he or she is disabled and incapacitated for the performance of duty as a result of such service-connected disability, a service-connected disability retirement allowance in an annual

allowance equal to forty percent of the member's final compensation, plus two and one-half percent of the member's final compensation for each year of federated city service for which the member is entitled to credit under the provisions of this system in excess of the first sixteen years of service; provided however, that in no event shall said allowance be more than seventy-five percent of the member's final compensation, less the amounts specified in Sections 3.28.1320 and 3.28.1330 of this chapter.

(Prior code § 2904.1460; Ord. 26846.)

### **3.28.1290 Nonservice-connected disability retirement - Eligibility.**

Subject to other provisions of this Chapter 3.28, a member who, while an employee of the city in the federated city service, is disabled and incapacitated for the performance of duty may be retired by the retirement board pursuant to the provisions of this section for such disability and shall be so retired, upon application being made therefor, if such disability is a nonservice-connected disability and if, in addition, such member satisfies and meets all of the eligibility requirements set forth in any one of the following subsections:

- A. The member is entitled to credit for five or more years of federated city service rendered after he or she became a member and while he or she was a member of this system; or
- B. The member is a former member of the Chapter 3.24 retirement system who became a member of this system pursuant to the provisions of Section 3.28.400 and such member's accumulated contributions in the retirement fund are five hundred dollars or more; or
- C. The member is a former member of the Chapter 3.24 retirement system who became a member of this system pursuant to the provisions of Section 3.28.410, 3.28.420 or 3.28.430, and such member's accumulated contributions in the retirement fund are five hundred dollars or more.

(Prior code § 2904.1461; Ords. 21371, 23485.)

### **3.28.1300 Nonservice-connected disability retirement - Allowance when member is eligible therefor under subsection A or B of Section 3.28.1290.**

- A. Subject to other provisions of this Chapter 3.28, a member who satisfies the eligibility requirements of subsection A. or B. of Section 3.28.1290 and is retired because of a nonservice-connected disability shall thereafter be paid from the retirement fund, while the person is disabled

and incapacitated for the performance of duty as a result of such nonservice-connected disability, an annual nonservice-connected disability retirement allowance calculated in accordance with this Section 3.28.1300.

- B. If the person became a member of this system prior to September 1, 1998, the nonservice-connected disability retirement allowance shall be the amount of the member's allowance if the member were retired for a service-connected disability pursuant to the provisions of Section 3.28.1280, less:
  1. The deductions specified in Sections 3.28.1330 and 3.28.1340; and
  2. In the case of a member who is under fifty-five years of age on the effective date of retirement, a sum equal to one-half percent times the number of years and/or fraction of years between the member's age on the effective date of retirement and fifty-five years, times the member's final compensation.

- C. If the person became a member of this system on or after September 1, 1998, the nonservice-connected disability retirement allowance shall, subject to a maximum of seventy-five percent of the member's final compensation, be:
  1. Twenty percent of the member's final compensation; plus
  2. Two percent of the member's final compensation for each year of service credit in excess of six years but less than sixteen years; plus
  3. Two and one-half percent of the member's final compensation for each year of service credit in excess of sixteen years; less
  4. The deductions specified in Sections 3.28.1330 and 3.28.1340.

(Prior code § 2904.1462; Ord. 25612.)

### **3.28.1310 Nonservice-connected disability retirement - Allowance when member is eligible therefor under subsection C of Section 3.28.1290.**

Subject to other provisions of this Chapter 3.28, a member who is retired pursuant to the provisions of Section 3.28.1290 because of a nonservice-connected disability shall thereafter be paid from the retirement fund, while he is disabled and incapacitated for the performance of duty as a result of such nonservice-connected disability, as a nonservice-connected disability allowance, if and only if he does not satisfy the eligibility requirement set forth in subsections A.



or B. of Section 3.28.1290 but does satisfy all of the eligibility requirements set forth in subsection C. of said Section 3.28.1290, an annual allowance equal to the amount hereinafter specified in subsection A. of this section, less the amount specified in subsection B. of this section, plus the amount specified in subsection C. of this section, less the deductions specified in subsection D. of this section, as follows:

- A. An amount equal to two and one-half percent of his final compensation times the number of years of federated city service to which he is entitled to credit under this system which were rendered by him after he became and while he was a member of this system;
- B. Less, if such member is under fifty-five years of age on the effective date of his retirement, a sum equal to one-half percent times the number of years and/or fraction of years between his age on the effective date of his retirement and fifty-five years, times his final compensation;
- C. Plus an amount equal to what would be his disability retirement allowance, as of June 30, 1975, under the provisions of the Chapter 3.24 retirement system as it existed on said date (excepting the provisions of subsection B. of Section 3.24.1840 which provide for a minimum allowance, it being the intent of this subsection that the provisions of said subsection B. of Section 3.24.1840 be disregarded in computing the amount payable under this paragraph) if he were then eligible to retire thereunder for disability and did then retire thereunder for disability, with credit only for those years of federated city service to which he was entitled to credit under the Chapter 3.24 retirement system on June 30, 1975 (plus the years of federated city service which he had theretofore lost because of his withdrawal of accumulated contributions but which he reacquired by redepositing such contributions pursuant to the provisions of Section 3.28.780), and with accumulated contributions in the retirement system equal to those then credited to him in said system plus formerly withdrawn amounts redeposited by him pursuant to the provisions of Section 3.28.780;
- D. Less the deductions specified in Sections 3.28.1320 and 3.28.1330.

(Prior code § 2904.1463.)

**3.28.1320 Election by former member of Chapter 3.24 system to receive disability retirement allowance provided by Chapter 3.24 system in lieu of certain Chapter 3.28 benefits.**

- A. A member of this system who is eligible to retire for disability under the preceding sections of this Part 10 may elect, if he was a former member of the Chapter 3.24 retirement system and became a member of this system pursuant to the provisions of Sections 3.28.400, 3.28.410, 3.28.420 or 3.28.430 of this chapter to receive, while he is disabled and incapacitated for the performance of duty as a result of such disability, in lieu of any and all benefits to which he or his survivors or estate might otherwise be or become entitled to because of his retirement for disability or because of his death after retirement while on such disability retirement, such disability retirement allowance as he would be entitled to if he were still a member of the Chapter 3.24 system, as it existed on June 30, 1975, and retired thereunder for disability at the same age as that at which he is retiring pursuant to the provisions of this Part 10, with credit for the number of years of federated city service for which he is entitled to credit under this system and with accumulated contributions equal to those credited to him in this system. A person making such election shall also be entitled to any right which he would have had, if he had retired under the Chapter 3.24 system, under the optional settlements provisions of the Chapter 3.24

system; and, if he exercises any rights under such optional settlements provisions, his named beneficiary shall receive, on his death while on such retirement, such benefits, if any, as such beneficiary should become entitled to under such optional settlements provisions because of his exercise of such rights.

- B. Upon exercising such election, said person loses all right to any and all other benefits which he might have or be or become entitled to under other sections of this Chapter 3.28 because of his retirement, and none of his survivors nor his estate shall have any right to any benefits under other sections of this Chapter 3.28 because of his death occurring while on such retirement; provided and excepting, however, that the special death benefit provided by Section 3.28.1620 shall still be payable, on his death while on retirement, to his estate or named beneficiary.

(Prior code § 2904.1464.)

### 3.28.1325 Reports of earnings from outside occupation.

- A. As a condition of a disability retirement allowance from the retirement fund, a person who has been retired for disability and has not reached age fifty-five shall file written statements with the board which conform to the requirements of subsection B. below.

- B. A recipient described in subsection A. shall file statements as described either in subsection 1. or in subsection 2.:

#### 1. Monthly and annual statements.

- a. Within ten days after the end of each calendar month, the recipient shall file a monthly statement of the total income and earnings received by the recipient during the reporting month from any gainful occupation, other than service as an officer or employee of the city, and the sources of such income and earnings; and

- h. On or before May 1 of each year, the recipient shall file a notarized declaration under penalty of perjury, in a form approved by the board, of the total income and earnings received by the recipient during the preceding calendar year, or any portion thereof, from any gainful occupation outside city service and the sources of such income and earnings.

#### 2. Income tax returns.

- a. Instead of the statements described in subsection 1., the recipient may file copies of the recipient's federal and state income tax returns and the recipient's W-2 and/or 1099 forms showing the total income and earnings received by the recipient from any gainful occupation, other than service as an officer or employee of the city, and the sources of such income and earnings. Such tax returns and forms shall be filed on or before the first day of May following the tax reporting period.
- b. If a recipient elects to file tax returns, the recipient shall provide written notice of such election to the board not later than the date the next monthly statement would otherwise be due.
- c. If a recipient elects to file tax returns, the recipient shall file with the board a written statement of the recipient's projected reportable income and earnings for each calendar year, and the sources of such income and earnings. Such statement shall be filed on or before the tenth day of January in the applicable calendar year. The recipient may file an amended statement in any case where there is a change in the projected income and earnings.
- C. For the purposes of this section, income and earnings shall not include interest, dividends or rent.
- D. If a recipient described in subsection A. fails to furnish the information required by this section, the disability retirement allowance shall be discontinued until such time as the required information is furnished. When the required information is furnished, the disability retirement allowance shall be reinstated and allowances withheld pending receipt of the required information shall be paid, less any applicable deductions.

(Ord. 24916.)

### 3.28.1330 Deductions - Recipient's earnings from outside occupation.

- A. In any case where the recipient of a disability retirement allowance meets the following

conditions, the recipient's disability retirement allowance shall be reduced as provided in subsection B. below:

1. The recipient has not reached age fifty-five; and
  2. The recipient is still incapacitated for the performance of duty; and
  3. The recipient is engaged in a gainful occupation other than service as an officer or employee of the city.
- B. During the period the recipient is engaged in gainful employment, the recipient's disability retirement allowance shall be reduced to the amount which, when added to the recipient's income or earnings from such gainful occupation and when also added to all other applicable deductions, if any, required by other provisions of this Chapter 3.28, shall not exceed the amount of the maximum compensation earnable in such period by a person holding the position which the recipient held at the time of retirement, or, if that position has been abolished, the maximum compensation earnable by a person holding it immediately prior to its abolition. In no event, however, shall the disability retirement allowance payable for any period exceed the amount of disability retirement allowance to which the recipient would have been entitled for such period in the absence of this section.
- C. For the purposes of this section, income and earnings shall not include interest, dividends or rent.
- D. Any overpayment of disability retirement allowance made to a recipient may be deducted from future allowances payable to the recipient or any beneficiary of the recipient or shall otherwise be collected from the recipient.
- E. The following conditions shall apply in any case where, pursuant to Section 3.28.1325, the recipient has elected to file tax returns in lieu of monthly statements of income and earnings:
1. Reductions in disability retirement allowances shall be made based upon the statement of projected reportable income and earnings filed by the recipient.
  2. Any overpayment of disability retirement allowance made during the applicable tax reporting period may be deducted from future allowances in substantially equal monthly deductions over a period not to exceed twelve months. If the deductions are

made as provided in this subsection E., the deductions shall include interest on the outstanding overpayment at the actuarial rate adopted by the board.

3. Any underpayment of disability retirement allowance made during the applicable tax reporting period shall be paid to the disability retirement allowance recipient in one lump sum within thirty days of the verification of the underpayment by the secretary to the board.
- F. When the recipient of a disability retirement allowance reaches age fifty-five, the deductions described in this section shall cease except to the extent necessary to recover any overpayment.  
(Prior code § 2904.1465; Ords. 20147, 24916.)

### 3.28.1340 Deductions - Recipient's earnings from nonfederated city service.

- A. Subject to the civil service rules, regulations and requirements of the city, the recipient of a disability retirement allowance may be reemployed by the city, in the city's discretion, in a position other than a position included in the federated city service, if he is not incapacitated for the performance of duty in such new position, notwithstanding the fact that he is still incapacitated for the performance of duty in the position held by him at the time of his retirement and in any other position in the same classification of positions as the one held by him at the time of his retirement.
- B. If, prior to attaining the age of fifty-five years, such recipient should be so reemployed as aforesaid to render city service not included in federated city service, the disability retirement allowance payable to him for each period of time during which he is so reemployed, and during which he is still incapacitated for the performance of duty in the position held by him at the time of his retirement and in any other position in the same classification of positions as the one held by him at the time he was retired shall be reduced, until he attains fifty-five years of age, to an amount which, when added to the compensation earned by him in such period in such position, and when also added to all other applicable deductions, if any, required by other provisions of this Chapter 3.28, shall not exceed the amount of the maximum compensation earnable by a person holding during such period the position

which he held at the time of his retirement, or, if that position has been abolished, the maximum compensation earnable by a person holding it immediately prior to its abolition as of the time of its abolition. In no event, however, shall the disability retirement allowance payable for any such period exceed the amount of disability retirement allowance which he would have been entitled to for such period in the absence of this section; and in no event shall such allowance continue to be paid after the recipient's incapacity for the performance of duty in the position held by him at the time he was retired, or in any other position in the same classification of positions as the one held by him at the time of his retirement, ceases. Upon such recipient attaining the age of fifty-five years, said deductions shall no longer be made.

(Prior code § 2904.1466.)

**3.28.1350 Recipient's reentry into federated city service in position and class of positions other than that from which he or she was retired for disability.**

- A. A person who has been retired for disability pursuant to any of the provisions of this Part 10 shall not be reemployed by the city to render any federated city service unless:
  - 1. The person is first reinstated from disability retirement pursuant to the provisions of this section or the provisions of Section 3.28.1370; or
  - 2. The person is reemployed pursuant to Section 3.28.1190.
- B. A person who has been retired for disability pursuant to the provisions of this part may apply to the retirement board in writing for reinstatement from such disability retirement and for reentry into the federated city service in a position and class of positions other than the position and class of positions from which the person was retired for disability. The board may reinstate the person from said disability retirement and permit the person's reentry into the federated city service in the new position and

class of positions if it finds that based on medical and physical examination he or she is not incapacitated to perform the duties of the office or position in the federated city service to which it is proposed he or she be appointed.

- C. Upon such reinstatement such person may be reemployed to render federated city service in the same manner as the city employs persons who have not been retired under this system.
- D. Upon reinstatement from disability retirement as provided above, the disability retirement allowance of the reinstated person shall be cancelled forthwith and the person shall again become a member of this system as of the date of his or her reentry into the federated city service. Upon again becoming a member, the person shall regain credit for those years of service to which he or she was entitled to credit as of the time he or she retired for disability.

(Prior code § 2904.1467; Ords. 21265, 26355.)

**3.28.1360 Member not to receive both service retirement and disability retirement.**

Notwithstanding anything contained in this Chapter 3.28 to the contrary, no member who is retired for service pursuant to the provisions of Part 9 of this chapter shall be eligible for or be entitled to retirement for any disability or for or to any benefits or allowances pursuant to the provisions of this Part 10 while he is so retired for service; and any and all

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disability retirement allowances otherwise payable to a person shall cease and terminate upon such person being retired for service.

(Prior code § 2904.1468.)

**3.28.1370 Medical examination of recipients - Allowance cancellation conditions.**

- A. The retirement board may at any time order and require any recipient of a disability retirement allowance to undergo medical examination by one or more physicians or surgeons appointed or engaged by the board for that purpose at a reasonable time and place to be determined by the board.
- B. Upon any such recipient's application for reinstatement to active duty, the board shall order and cause a medical examination to be made of such recipient by one or more other physicians or surgeons appointed or engaged by the board. Any such order may be serviced upon said recipient either by personal service or by depositing the same in the United States mail, postage prepaid, addressed to the member at his latest address on file in the office of the secretary of the board, at least ten days prior to the date upon which he is to report to the physician or surgeon for examination. The recipient of the disability allowance may submit a medical report by his own physician or surgeon. Upon the basis of such examination and other relevant evidence, the board shall determine whether the recipient is still incapacitated for the performance of duty, and if it finds that he is not, it shall so declare, whereupon, unless otherwise expressly provided elsewhere in this part, the disability retirement and disability allowance shall thereupon immediately cease and be deemed terminated.

(Prior code § 2904.1469.)

**3.28.1380 Reinstatement to duty.**

If the board determines that the recipient of a disability allowance granted pursuant to the provisions of this part is no longer incapacitated for performance of duty, and if as of the date of such determination such person is not yet fifty-five years of age, such person shall, subject to the civil service provisions of the city, and subject to the provisions of this chapter, be reinstated in the position held by him at the time he retired for disability or in another position in the same classification of positions as the one held by him at the time he was retired with duties within his capacities.

No person shall be reinstated to duty if he was fifty-five or more years of age on the date that the board made its determination that he was no longer incapacitated for the performance of duty. Upon being reinstated to duty pursuant to the provisions of this section, said recipient shall again become a member of this system, and shall be entitled to credit for past service the same as if he had never been retired for disability.

(Prior code § 2904.1470.)

**3.28.1390 Refusal to accept reinstatement.**

If, after the board finds that the recipient of a disability allowance is no longer incapacitated for duty, and after such person becomes entitled to reinstatement to duty as provided in Section 3.28.1370, such person fails to report for duty, although work is offered him in his prior position or classification of positions, or rejects an offer of reinstatement and return to duty, all rights granted him by this chapter shall thereupon be canceled, and neither he nor his survivors shall thereafter be entitled to any benefits provided by this Chapter 3.28.

(Prior code § 2904.1471.)

**3.28.1400 Recipient attaining age fifty-five to be deemed permanently disabled.**

Anything elsewhere to the contrary notwithstanding, if a recipient of a disability allowance granted pursuant to the provisions of this Part 10 should, upon attaining the age of fifty-five years, still be incapacitated to perform the duties of the position held by him at the time of his retirement and of any other position in the same classification of positions as the one held by him at the time he was retired pursuant to the provisions of this part, he shall, for purposes of this chapter, upon attaining age fifty-five, be deemed permanently disabled and no longer be subject to recall to duty, and his disability retirement allowance may not thereafter be canceled.

(Prior code § 2904.1472.)

**3.28.1410 Failure or refusal to submit to medical examination.**

If any recipient of the disability retirement allowance fails or refuses to submit to medical examination or examinations as ordered or required by the retirement board, the board may thereupon terminate said person's disability retirement and disability retirement allowance, in which event, subject to the following provisions, such person shall

have no right to restoration to duty under or by virtue of any provisions of the chapter, nor shall he or any of his survivors nor his estate thereafter be entitled to any allowances or benefits under this system; provided, however, that if said person should apply for reinstatement of said disability retirement within one year from and after the date of termination of said retirement, and if he should prove to the satisfaction of the board that his disability continues and has not ceased, the board may reinstate said disability retirement and disability allowance as of the date of the order of such reinstatement or as of such prior date which the board should find to be just and reasonable; and provided further, that if said person should die before having said disability retirement and disability retirement allowance reinstated as aforesaid and within one year from and after the date that the board terminated said disability retirement, then in that event the surviving spouse or surviving child or children of said deceased person or his estate may, within said one year from and after the date the board terminated such retirement allowance, apply to the board for such survivor's or death benefits, if any, as they would be entitled to if said deceased person's disability retirement had not been terminated as aforesaid, and if they should prove to the satisfaction of the board that said deceased person's disability retirement had not been terminated as aforesaid, and if they should prove to the satisfaction of the board that said deceased person's original disability continued to the time of his death, the board may grant to them such survivorship or death allowances or benefits as they would have been entitled to if the abovementioned disability retirement had not been terminated as aforesaid. In no event shall said disability retirement or disability retirement allowance be reinstated unless application therefor has been made within one year from and after the board terminated such retirement; and in no event shall any survivorship allowances or death benefits be granted to anyone pursuant to the provisions of this section unless application therefor has been made within one year from and after the date said board terminated said disability retirement.

(Prior code § 2904.1473.)

**3.28.1420 Situations where member is not entitled to disability retirement or disability retirement allowance.**

Anything elsewhere in this chapter to the contrary notwithstanding, no person shall be entitled to any disability retirement or to any disability retirement allowance under the provisions of this chapter in any of the following situations:

- A. Where the person's disability occurred before the person became a member of this retirement system.
- B. Where the person's disability occurs after the person ceases to be a member of this retirement system or after the person ceases to be an employee in the federated city service, except as provided in Section 3.28.2420.
- C. Where the person's disability occurs while the person is on leave of absence from federated city service, including but not limited to situations where such leave of absence is granted for the performance of military, marine, naval or other duty or service for the United States of America or for any other nation, state, person or persons, or is granted for any other purpose or purposes except as follows:
  1. The provisions of this paragraph C. shall not apply where the person's disability occurs while the person is on leave of absence with full city compensation and pay.
  2. The provisions of this paragraph C. shall not apply where the person's disability occurs while the person is on leave of absence without compensation because of a city hall closure and the time on such leave qualifies as federated city service under Section 32.28.685.

(Prior code § 2904.1474; Ord. 24807.)

**3.28.1430 Payment of disability allowances to constitute return and withdrawal of contributions.**

Anything elsewhere in this chapter to the contrary notwithstanding, the payment to and receipt by any person of any disability retirement allowance or allowances shall constitute and be deemed to be a return to and withdrawal by such person, to the extent of the amount of such allowance or allowances so paid to and received by him, of any or all contributions theretofore made by such person to the retirement fund prior to the date he was retired for disability, and the amount of such allowance or allowances so paid to and received by him shall be deducted from the amount of accumulated contributions in the fund which are credited to him; provided and excepting, however, that he shall be deemed to still have at least five hundred dollars in the fund for the purposes of qualifying for benefits under this system. Nothing herein contained, however, shall be deemed to restrict the amount of disability allowances payable to any such person to the amount of contributions theretofore contributed by him to the fund, it being the intent that

such allowances shall continue to be paid to such person as provided by and subject to other provisions of this part even after all contributions standing to his credit shall have been so withdrawn and exhausted. (Prior code § 2904.1475.)

**3.28.1440 Failure to reinstate recipient of a disability allowance to duty on cessation of disability.**

Anything elsewhere in this chapter to the contrary notwithstanding, if the disability for which a person has been granted a disability retirement or disability retirement allowance pursuant to the provisions of this chapter should cease, and if in addition such person should be then ready, willing and able to be reinstated to duty in and to assume and perform the responsibilities and duties of the position from which he was retired for disability and of any other position in the same class of positions, then in that event such person shall nonetheless continue to be deemed retired for the disability which no longer exists, and continue to be entitled to such disability retirement allowance, if any, as he would be entitled to under the provisions of this part if the disability for which he was retired had not ceased, until he is reinstated to duty in the position from which he was retired or in any other position in the same class of positions, or until he rejects an offer to reinstatement in any such position, or until he refuses or fails to report to duty in any such position when requested to do so, or becomes unable for any reason to accept reinstatement to duty in, or to assume and perform the responsibilities and duties of, the position from which in the same class of positions, whichever is the earlier; provided, however, that nothing herein this section contained shall be deemed to deprive the retirement board of any rights which it might otherwise have under other provisions of this chapter to cancel, terminate, suspend or reduce said retirement or retirement allowance for any reason or reason other than the fact that said disability has ceased. (Prior code § 2904.1476.)

**Part 10A**

**REEMPLOYMENT OF DISABILITY RETIREE**

**Sections:**

- 3.28.1441 Applicability.
- 3.28.1442 Reemployment of disability retiree in city service - Eligibility.
- 3.28.1443 Reemployment; disability allowance suspended; credit to city.
- 3.28.1444 Credit for prior years.

- 3.28.1445 Medical examination of recipient - Cancellation of allowance.
- 3.28.1446 Reinstatement to duty.
- 3.28.1447 Refusal to accept reinstatement.
- 3.28.1448 Reserved.
- 3.28.1449 Failure or refusal to submit to medical examination.
- 3.28.1449.1 Payment of disability allowances to constitute return and withdrawal of contributions.
- 3.28.1449.2 Failure to reinstate recipient of a disability allowance to duty on cessation of disability.
- 3.28.1449.3 Disability while reemployed in new class of city positions.
- 3.28.1449.4 Member not to receive both service retirement and disability retirement benefits.
- 3.28.1449.5 Reemployment conditions upon cessation of disability.
- 3.28.1449.6 Election to allow accumulated contributions to remain in fund.
- 3.28.1449.7 Payment to member's estate of balance of member's accumulated contribution, applied to reemployed disability retiree.
- 3.28.1449.8 Retirement for service.
- 3.28.1449.9 Applicability.
- 3.28.1449.10 Reinstatement from retirement.
- 3.28.1449.11 Eligibility for subsequent disability retirement.
- 3.28.1449.12 Reemployed member not to receive concurrent disability retirements, nor service retirement.
- 3.28.1449.13 Death before retirement.

**3.28.1441 Applicability.**

The provisions of this part shall be applicable only where, prior to reemployment in city service, the affected disability retiree has, in writing, filed with the retirement board, election to be governed by this part, and the city has given written notification to such retiree that it also so elects.

Notwithstanding anything contained in Chapter 3.20 through Chapter 3.28 to the contrary, this Part 10A shall supersede only inconsistent or conflicting provisions of any part therein, unless an exception is expressly made within this part. Except to the extent such provisions of Chapter 3.20 through Chapter 3.28 are in conflict or inconsistent, the city and the affected disability retiree, and the survivors and estate thereof, shall each be governed by such other provisions. (Ord. 19839.)



**3.28.1442 Reemployment of disability retiree in city service - Eligibility.**

- A. Subject to the civil service rules, regulations and requirements of the city, a person who has been retired for disability pursuant to Part 17 or Part 18 of Chapter 3.24 or Part 10 of Chapter 3.28 of this Code may be reemployed from time to time in city service pursuant to voluntary agreement of both the city and such person, in any positions or offices other than the position or office held by that person at the time of such retirement whether in the same or another classification, if, based on medical and physical examination, the person is not incapacitated for performance of duty in any such new position or office, notwithstanding that he or she is still incapacitated for performance of duty in the position or office held at the time of such retirement and in any other office or position in the same classification of offices or positions as the one held at the time of such retirement.

- B. Upon such reentry into city service, the person's disability retirement shall be suspended and the person shall be reinstated to membership in this plan and his/her membership herein pursuant to this paragraph shall continue, subject to other provisions of this part, until the cessation of the person's disability for performance of duty in the office or position held at the time of his or her disability retirement, or in any other office or position in the same classification of offices or positions within which he or she was included at such retirement, unless the office or position which the person held upon such cessation of disability is one which would qualify him or her for membership by virtue of other provisions of this part. In the latter event, the person's membership shall continue as long as he or she occupies such office or position, or any other office or position to which the person is subsequently appointed which similarly qualifies him or her for membership.

(Ord. 19839; Ord. 27838.)

**3.28.1443 Reemployment; disability allowance suspended; credit to city.**

- A. Upon a person's reentry into city service pursuant to Section 3.28.1442, the disability allowance granted pursuant to Part 17 or Part

18 of Chapter 3.24 or Part 10 of Chapter 3.28 of this Code shall be suspended and the city shall compensate the person at the greater of:

1. The rate of compensation of the position in which the person is reemployed; or
2. The rate of compensation of the position from which the person retired at the time of such retirement.

- B. In any case where the rate of compensation of the position from which the person retired exceeds the rate of compensation of the position in which the person is reemployed, the city shall receive a credit against city contributions otherwise due to the retirement fund. The credit shall be equivalent to that portion of the compensation paid to the person during the suspension of the person's disability retirement that exceeds the rate of compensation of the position in which the person is reemployed.

- C. During the period the person's disability retirement is suspended and the person is reemployed, the person's "compensation earnable" shall be based upon the position of reemployment.

(Ord. 19839; Ord. 27838.)

**3.28.1444 Credit for prior years.**

Upon reinstatement of membership in this system under Part 10A, the recipient of a disability retirement allowance shall become a member of this system and regain credit for those years of service to which he was entitled at the time he retired for disability.

(Ord. 19839.)

**3.28.1445 Medical examination of recipient - Cancellation of allowance.**

The retirement board may at any time order and require any recipient of a disability retirement allowance to undergo medical examination by one or more physicians or surgeons appointed or engaged by the board for that purpose at a reasonable time and place to be determined by the board.

Upon any such recipient's application for reinstatement from disability retirement to active duty, the board shall order and cause a medical examination to be made of such recipient by one or more other physicians or surgeons appointed or engaged by the board. Any such order may be served upon said recipient either by personal service or by depositing the same in the United States mail, postage prepaid, addressed to the member

at his latest address on file in the office of the secretary of the board, at least ten days prior to the date upon which he is to report to the physician or surgeon for examination. The recipient of the disability allowance may submit a medical report by his own physician or surgeon. Upon the basis of such examination and other relevant evidence, the board shall determine whether the recipient is still incapacitated for the performance of duty in the position or office held by him at the time he retired for disability, or in another position or office in the same classification of positions or offices as the one in which he was included at the time he was so retired. If the board finds that he is not so incapacitated, it shall make a written finding to that effect; whereupon, unless expressly provided elsewhere in this Part 10A, the disability retirement allowance shall thereupon immediately cease and be terminated. (Ord. 19839.)

### 3.28.1446 Reinstatement to duty.

If, on the motion of the board or application of a disability retiree, the board determines that the recipient of a disability allowance granted pursuant to the provisions of this part is no longer incapacitated for performance of duty, and if as of the date of such determination such person is not eligible for a service retirement, such person shall, subject to the civil service provisions of the city, and subject to the provisions of this part, be reinstated in the position held by him or her at the time he or she retired for disability or in another position in the same classification of positions as the one held by him or her at the time he or she was retired with duties within his capacities. No person shall be required to be reinstated to duty if he or she was eligible for a service retirement on the date that the board made its determination that the person was no longer incapacitated for the performance of duty. Upon being reinstated to duty pursuant to the provisions of this section, the person shall again become a member of this system by reason of such reinstatement and shall be entitled to credit for past service, the same as if he or she had never been retired for disability.

(Ord. 19839; Ord. 27838.)

### 3.28.1447 Refusal to accept reinstatement.

If, after the board finds that the recipient of a disability allowance is no longer incapacitated for duty, and after such person becomes entitled to reinstatement to duty as provided in Section 3.28.1446 such person fails to report for duty, although work is offered him in his prior position or classification of positions, or rejects an offer of reinstatement and return to duty, all rights

granted him by this part shall thereupon be canceled and neither he nor his survivors shall thereafter be entitled to any benefits provided by Part 1 of Chapter 3.28 except as follows: Such person shall be deemed to be a person appointed under Section 3.28.450 effective for the first time upon reemployment, and all qualifications for and the nature and extent of all benefits hereunder shall be so determined solely upon the compensation and service provided on and after such reemployment. (Ord. 19839.)

### 3.28.1448 Reserved.

Editor's note—Ord. 27838, § 15, adopted September 12, 2006, repealed § 3.28.1448, which pertained to recipient attaining age fifty-five to be deemed permanently disabled.

### 3.28.1449 Failure or refusal to submit to medical examination.

If any recipient of a disability retirement allowance fails or refuses to submit to medical examination or examinations as ordered or required by the retirement board, the board may thereupon terminate said person's disability retirement and disability retirement allowance, in which event, subject to the following provisions, such person shall have no right to reinstatement to duty under or by virtue of any provisions of this part, nor shall he or any of his survivors nor his estate thereafter be entitled to any allowances or benefits under this system; provided, however, that if said person should apply for reinstatement of said disability retirement within one year from and after the date of termination of said retirement, and if he should prove to the satisfaction of the board that his disability continues and has not ceased, the board may reinstate said disability retirement and disability allowance as of the date of the order of such reinstatement or as of such prior date which the board should find to be just and reasonable; and provided further, that if said person should die before having said disability retirement and disability retirement allowance reinstated as aforesaid and within one year from and after the date that the board terminated said disability retirement, then in that event, the surviving spouse or surviving child or children of said deceased person or his estate may, within said one year from and after the date said board terminated said retirement allowance, apply to said board for such survivor's or death benefits, if any, as they would be entitled to if said deceased person's disability retirement had not been terminated as aforesaid, and if they should prove to the satisfaction of the board that said deceased person's original disability

continued to the time of his death, the board may grant to them such survivorship or death allowances or benefits as they would have been entitled to if the above-mentioned disability retirement had not been terminated as aforesaid. In no event shall said disability retirement or disability retirement allowance be reinstated unless application therefor has been made within one year from and after the board terminated such retirement; and in no event shall any survivorship allowances or death benefits be granted to anyone pursuant to the provisions of this section unless application therefor has been made within one year from and after the date said board terminated said disability retirement.

(Ord. 19839.)

**3.28.1449.1 Payment of disability allowances to constitute return and withdrawal of contributions.**

Anything elsewhere in this part to the contrary notwithstanding, the payment to, and receipt by, any person of any disability retirement allowance or allowances shall constitute and be deemed to be a return to and withdrawal by such person, to the extent of the amount of such allowance or allowances so paid to and received by him, of any and all contributions theretofore made by such person to the retirement fund prior to the date he was retired for disability, and the amount of such allowance or allowances so paid to and received by him shall be deducted from the amount of accumulated contributions in the fund which are credited to him; provided and excepting, however, that he shall be deemed to still have at least five hundred dollars in said fund for the purposes of qualifying for benefits under this system. Nothing herein contained, however, shall be deemed to restrict the amount of disability allowance payable to any such person to the amount of contributions theretofore contributed by him to the fund, it being the intent that such allowances shall continue to be paid to such person as provided by and subject to other provisions of this part even after all contributions standing to his credit shall have been so withdrawn and exhausted.

(Ord. 19839.)

**3.28.1449.2 Failure to reinstate recipient of a disability allowance to duty on cessation of disability.**

Anything elsewhere in this part to the contrary notwithstanding, if the disability for which a person has been granted a disability retirement or disability retirement allowance pursuant to the provisions of this part should cease, and if, in addition, such person should be then ready, willing and able to be reinstated to duty in and to assume and perform the responsibilities and duties of the position from which he was retired for disability or of any other position in the same class of positions, then in that event such person shall nonetheless continue to be deemed retired for the disability which no longer exists, and continue to be entitled to such disability retirement allowance, if any, as he would be entitled to under the provisions of this part of the disability for which he was retired had not ceased, until he is reinstated to duty in the position from which he was retired or in any other position in the same class of positions, or until he rejects an offer of reinstatement in any such position, or until he refuses or fails to report to duty in any such position when requested to do so, or becomes unable for any reason to accept reinstatement to duty in, or to assume and perform the responsibilities and duties of the position from which he was retired or of any other position in the same class of positions, whichever is the earlier; provided, however, that nothing herein in this section contained shall be deemed to deprive the retirement board of any rights which it might otherwise have under other provisions of this part to cancel, terminate, suspend or reduce said retirement or retirement allowance for any reason or reasons other than the fact that said disability has ceased. (Ord. 19839.)

**3.28.1449.3 Disability while reemployed in new class of city positions.**

If a recipient of a disability retirement allowance is reemployed in city service in a position other than that held by him at the time of his retirement and other than one in the same classification of positions as the one held by him at the time of his retirement, and if such recipient should become incapacitated for the performance of duty in such new position before his disability for the performance of duty in the position originally held by him or in any other position in the same classification as the position originally held by him at the time he was first retired ceases, thereupon, either:

- A. He shall resign or be discharged from his latest position, in which event he shall continue to have all such rights to a disability retirement allowance under this part as he had prior to being reemployed by the city; or
- B. He may, if he so elects by giving written notice of such election to the retirement board within thirty days from and after cessation of active duty in his latest position, and if he is otherwise eligible for the same under other provisions of this part, be retired for disability from his latest position, in which event his former disability retirement and retirement allowance shall be automatically canceled and terminated as of the date of his new retirement.

If he is retired from his latest position pursuant to the above provisions of paragraph B, and if, thereafter, the disability because of which he was given his latest retirement should cease and all retirement allowances payable to him because of his latest disability retirement should cease, but his disability for the performance of duty in the position originally held by him or in any other position in the same classification of positions originally held by him has not ceased, then his original disability retirement and original disability retirement allowance shall be reinstated, to continue so long as his original disability exists. Such original disability allowance shall be in the amount last paid prior to its termination and shall not be modified solely by reason of the additional period of time succeeding its original determination during which the recipient has been reemployed under this Part 10A, nor shall it be increased or decreased by reason of any compensation earnable during the period of reemployment.

If he is retired from his latest position pursuant to the above provisions of paragraph B, and if, thereafter, his disability for his original position or class of positions should cease, then his latest disability retirement and all disability retirement allowances shall automatically cease and terminate and he shall have such rights to reinstatement to duty in his original position or class as are provided in Section 3.28.1446.

In no event shall any person be entitled to more than one allowance at or for any one time. (Ord. 19839.)

**3.28.1449.4 Member not to receive both service retirement and disability retirement benefits.**

Notwithstanding anything contained in this part to the contrary, no member who is retired for service pursuant to the provisions of Part 9 shall be eligible for or be entitled to retirement for any disability or for or to any benefits or allowances pursuant to the provisions of this Part 10A while he is so retired for service. Any and all disability retirement allowances otherwise payable to a person shall cease and terminate upon such person's being retired for service. (Ord. 19839.)

**3.28.1449.5 Reemployment conditions upon cessation of disability.**

Notwithstanding anything to the contrary in Chapter 3.20 through Chapter 3.28 of this code, upon written election by the city and a disability retiree reemployed under this Part 10A, such retiree may at any time prior to six months before age seventy and notwithstanding the limitations in Section 3.28.1448 be reinstated from disability retirement and the disability retirement allowance may be terminated in accordance with procedures and on the grounds set forth in Sections 3.28.1446 and 3.28.1449.2, notwithstanding that city does not offer the person the same position or office from which he was retired, or a position or office in the same classification of offices or positions which included him at such time provided that city offers and the person accepts the latest position or office of reemployment in which the person is employed; thereafter, for the purposes of this Part 10A and Section 3.28.030.06, compensation earnable for such position or office shall be the regular compensation therefor undiminished by such amounts as would otherwise have been paid as a disability retirement allowance to such person. (Ord. 19839.)

**3.28.1449.6 Election to allow accumulated contributions to remain in fund.**

- A. The provisions of Section 3.28.580 under which an election is an election granted to the persons specified therein to allow accumulated contributions to remain on deposit with the fund shall be deemed to grant a similar election to a Part 1, Chapter 3.24 disability retiree upon and after his reemployment by the city under this Part 10A. For the purpose of this Part 10A a former member of the Part 1, Chapter 3.24 retirement

system reemployed hereunder while on disability retirement but receiving a disability retirement allowance shall be deemed a person reinstated from Part 1, Chapter 3.24 disability retirement within the meaning of Sections 3.28.420, 3.28.480.C and 3.28.480.F. notwithstanding that the disability retirement and disability retirement allowance continue and neither cease nor are canceled, and there is no reinstatement from disability under Section 3.24.1290 or 3.24.1300.

- B. Retirees reemployed under this Part 10A, other than those whose membership entitles them to the election mentioned in subsection A. of this section, shall upon and after such reemployment have such election to allow accumulated contributions to remain in the fund as is provided in Section 3.28.590.

(Ord. 19839.)

**3.28.1449.7 Payment to member's estate of balance of member's accumulated contribution, applied to reemployed disability retiree.**

The provisions of Section 3.28.1070 shall apply to a disability retiree reemployed under this Part 10A while receiving a disability retirement allowance; however for the purpose of this Part 10A, the term "death before retirement" as used therein shall mean and refer to the death of such disability retiree, either (a) while reemployed and before retirement for service or for a new disability arising during the period of reemployment; or (b) after a voluntary or involuntary termination of service of such retiree from city service, other than by service retirement or the new disability retirement described in subdivision (a), and such retiree was qualified to, and did in fact, leave on deposit all his accumulated normal contributions and accumulated prior service contributions. (Ord. 19839.)

**3.28.1449.8 Retirement for service.**

A person reemployed under this Part 10A is not eligible for a service retirement under the Part 1 of Chapter 3.24 or Part 1 of Chapter 3.28 plan by reason of disability retirement or the receipt of a disability retirement allowance under either such plan; however such disability retirement and allowance therefore shall immediately cease and terminate upon service retirement under either such plan.

Whenever in Part 9 of the Chapter 3.28 plan provision is made for service retirement of a person

who became a member of the Chapter 3.28 system pursuant to Section 3.28.420 of this code, a Chapter 3.24 disability retiree reemployed hereunder shall be deemed to have qualified for and become a member of the Chapter 3.28 plan for the purpose of this part and section notwithstanding that his disability retirement and disability retirement allowance continue and he has not been reinstated from such disability retirement.

(Ord. 19839.)

#### 3.28.1449.9 Applicability.

A. A person retired for service pursuant to any of the provisions of Part 9 or 10A of the Chapter 3.28 plan shall not be retained or reemployed by the city, except as an independent contractor or pursuant to Section 3.28.1190, to render any city service unless the person is first reinstated from service retirement pursuant to the provisions of Part 9 of the plan.

B. A person who has retired for service pursuant to the provisions of Part 9 or Part 10A of this chapter may be retained to render service to the city which is not federated city service only as provided in Section 3.28.1180.

(Ords. 19839, 26355.)

#### 3.28.1449.10 Reinstatement from retirement.

A person who has been retired for service pursuant to the provisions of this part may apply to the retirement board, in writing, for reinstatement from such retirement for the purpose of reentering city service. The board may reinstate him from retirement if it finds (a) that his age at the date of his application is at least six months less than seventy years of age; (b) that, based on medical and physical examination, he is not incapacitated to perform the duties of the office or position in the city service to which it is proposed he be appointed. Upon such reinstatement, said person may be reemployed by the city, in the same manner as it employs persons who have not been retired hereunder, to render city service.

Upon reinstatement from service retirement as aforesaid, the service retirement allowance of the reinstated person shall be canceled forthwith, and he shall again become a member of this system as of the date of his reinstatement. Upon reinstatement he shall regain credit for those years of service to which he was entitled to credit as of the time he retired for service.

(Ord. 19839.)

#### 3.28.1449.11 Eligibility for subsequent disability retirement.

Retirees reemployed under this Part 10A shall be eligible for service connected disability retirement under Section 3.28.1280 and for nonservice-connected disability retirement under Section 3.28.1290 where such disability occurs after reemployment. If not otherwise qualified under subsections A. or B. thereof for the purpose of this Part 10A, a former member of the Chapter 3.24 retirement system reemployed hereunder while on disability retirement and receiving a disability retirement allowance with accumulated contributions of five hundred dollars or more in the retirement fund shall be deemed a person reinstated within the meaning of Sections 3.28.1290.C., 3.28.420, 3.28.480.C., 3.28.480.F. and 3.28.420 as amended in Section 3.28.1320, notwithstanding that the disability retirement and disability retirement allowance continue, and neither cease nor are canceled, and there is no reinstatement from disability under Section 3.24.1290 or 3.24.1300.

(Ord. 19839.)

#### 3.28.1449.12 Reemployed member not to receive concurrent disability retirements, nor service retirement.

Notwithstanding anything to the contrary in Chapter 3.20 through Chapter 3.28 of this code, no member is entitled to or shall receive two concurrent disability retirement allowances under any part of said Chapter 3.20 through Chapter 3.28. Further, no member who is retired for service pursuant to the provisions of Part 9 shall be eligible for or entitled to any retirement for any disability, or for or to any benefits or allowances pursuant to the provisions of this Part 10A while he is so retired for service; and any and all disability retirement allowances otherwise payable to a person shall cease and terminate upon such person being retired for service.

(Ord. 19839.)

**3.28.1449.13 Death before retirement.**

Part 11 of the Chapter 3.28 plan shall apply to a disability retiree reemployed under this Part 10A; provided, however, that under Section 3.28.1460, the survivors and estate of such disability retiree shall not be disqualified from any such benefits by reason of the fact that the person so reemployed continued on disability retirement and was receiving a disability retirement allowance during reemployment. For the purpose of this Part 10A, the term "death before retirement" as used in Section 3.28.1460 means the death of a disability retiree who has become a member of this system by reemployment under Part 10A, occurring while said person is a member of this system and before he retires for service or a disability occurring after such reemployment.

For the purpose of Section 3.28.1490 of said Part 11, a Chapter 3.28 disability retiree reemployed under this Part 10A shall be deemed to be a member of this system under Section 3.28.420, notwithstanding that his disability retirement and disability retirement allowance continue and he has not been reinstated from disability retirement.  
(Ord. 19839.)

**Part 11****DEATH BEFORE RETIREMENT****Sections:**

- 3.28.1450** Applicability of Part 11 provisions.
- 3.28.1460** Definitions.
- 3.28.1470** Eligibility for allowance.
- 3.28.1480** Amount of allowance to spouse, domestic partner or children if they are eligible under Section 3.28.1470.
- 3.28.1490** Benefits payable where deceased member was formerly a member of Chapter 3.24 retirement system and became a member of this system under Sections 3.28.410, 3.28.420, or 3.28.430 and surviving spouse, surviving domestic partner or children are not eligible for allowance under Sections 3.28.1470 and 3.28.1480.

**3.28.1500** Death benefit - Description and conditions.

**3.28.1510** Death benefit - Election for payment in installments.

**3.28.1520** Surviving child's or children's allowances - How paid.

**3.28.1525** Surviving children's allowances - Payment to custodian or trustee.

**3.28.1530** Posthumous children.

**3.28.1450 Applicability of Part 11 provisions.**

Except as may be otherwise specifically provided by other provisions of this Chapter 3.28, the provisions of this Part 11 shall apply only if and when a member of this system dies while he is a member of this system and before being retired for service or disability (or, if he has previously been retired but later reinstated to federated City service and again becomes a member of this system, while he is again a member and before he again retires for service or disability).

(Prior code § 2904.1500.)

**3.28.1460 Definitions.**

As used in this Part 11:

- A. "Death before retirement" means death of a member of this system while a member of this system and before retirement for service or disability. If a member should die after reinstatement from retirement and while a member of this system but before he or she again retires, such member's death shall be deemed to be "death before retirement."
- B. "Nonservice-connected death" means death of a member which is not a service-connected death.
- C. "Service-connected death" means death of a member which arises or results from an injury or disease arising out of and in the course of the federated city service for which such deceased member was entitled to credit under this system.
- D. "Surviving child" and "surviving children" mean such child or children of a deceased member that meet and satisfy all of the following conditions and requirements:
  1. The child survives the member's death; and
  2. The child is neither married nor a member of a registered domestic partnership at the time of the member's death; and
  3. The child is under the age of eighteen years at the time of the member's death; and

4. If the child is an adopted child of the member, the adoption was completed pursuant to law prior to the member's death. A child who has been married, but whose marriage has been dissolved by divorce or death, shall not be deemed to be a surviving child as said term is used in this Part 11. A child who has been a member of a registered domestic partnership, but whose partnership has been terminated through a proceeding for dissolution or by filing a notice of termination of domestic partnership, or by death, shall not be deemed to be a surviving child as said term is used in this Part 11.
  - E. "Surviving spouse" means the person to whom a member was married at the time of the member's death who survives the member's death, and none other.
  - F. "Surviving domestic partner" means the person:
    1. With whom a member, at the time of the member's death, had established a registered domestic partnership by filing a declaration of domestic partnership with the secretary of state pursuant to Division 2.5 of the California Family Code or had formed a legal union other than a marriage in a jurisdiction other than California and such union is recognized as a domestic partnership pursuant to California Family Code Section 299.2; and
    2. Who survives the member's death.
- (Prior code §§ 2904.1501-2904.1505; Ords. 23806, 27521.)

### 3.28.1470 Eligibility for allowance.

The benefits hereinafter specified in Section 3.28.1480 shall be payable to the persons specified in such section in each of the following situations, and none other:

- A. Upon the death before retirement of a member who at the time of death was entitled to credit under this system for five or more years of federated city service rendered after June 30, 1975, and while he or she was a member of this system;
- B. Upon the death before retirement of a member who was a former member of the Chapter 3.24 retirement system who became a member of this system pursuant to the provisions of Section 3.28.400 and who, in addition, has five hundred

dollars or more of accumulated contributions in the retirement fund at the time of death;

- C. Upon the death before retirement of any other member, regardless of amount of service or accumulated contributions, if such death is found and determined by the retirement board to be a service-connected death as such is defined in this Part 11.

(Prior code § 2904.1506; Ords. 21371, 23485.)

### 3.28.1480 Amount of allowance to spouse, domestic partner or children if they are eligible under Section 3.28.1470.

Allowances payable to those persons only who are eligible for an allowance under the provisions of Section 3.28.1470 shall be as follows:

- A. Subject to other provisions of this Chapter 3.28, in any of the situations specified in Section 3.28.1470, the surviving spouse or surviving domestic partner, if any, of such member shall thereafter be entitled to receive and be paid, from the retirement fund, the following annual allowance.
  1. If the deceased as of the time of his or her death, had attained the minimum age for service retirement and was credited with twenty or more years of federated city service, the surviving spouse or surviving domestic partner shall be entitled to receive said allowance until the surviving spouse or surviving domestic partner dies.
  2. If the deceased, as of the time of his or her death, had not attained the minimum age for service retirement or was not credited with twenty or more years of federated city service, the surviving spouse or surviving domestic partner shall be entitled to receive said allowance until the surviving spouse or surviving domestic partner dies or marries or establishes a subsequent registered domestic partnership, whichever is earlier.
  3. Said annual allowance shall be equal to two and one-half percent of the deceased member's final compensation times the number of years of federated city service for which the deceased member was entitled to credit under the retirement system at the time of the deceased member's death; provided and excepting, however, that:
    - a. Such annual allowance shall never be more than seventy-five percent of the deceased member's final compensation; and



- b. Such annual allowance shall not be less than forty percent of the deceased member's final compensation if the deceased member at the time of death was in the employ of the city for the purpose of rendering federated city service and such employment had not been terminated by resignation, discharge or layoff.
- B. Subject to other provisions of this chapter, in any of the situations specified in Section 3.28.1470, if, at the time of said member's death, there is no surviving spouse or surviving domestic partner but there is or are one or more eligible surviving children, the following annual allowance shall be paid to said child or children, as follows:
1. If there is only one eligible surviving child, such child shall be entitled to receive and shall be paid, from the retirement fund, until he or she attains the age of eighteen years, marries, establishes a registered domestic partnership, or dies, whichever is earlier, an annual allowance equal to twenty-five percent of the annual allowance that would have been payable to a surviving spouse or surviving domestic partner under subsection A. of this section if there had been a surviving spouse or surviving domestic partner.
  2. If there are two or more eligible surviving children, each surviving child thereafter in existence shall be entitled to receive and shall be paid from the retirement fund, until he or she attains the age of eighteen years or marries, establishes a registered domestic partnership, or dies, whichever is earlier, an annual allowance equal to that proportion of the annual allowance which would have been payable to the surviving spouse or surviving domestic partner under subsection A. of this section if there had been a surviving spouse or surviving domestic partner which one bears to the total number of eligible surviving children in existence at the time any such allowance becomes payable, subject to the following limitations:
    - a. The annual allowance payable to any surviving child shall never exceed twenty-five percent of the annual allowance that would have been payable to a surviving spouse or surviving domestic partner under subsection A of this section if there were a surviving spouse or surviving domestic partner; and
    - b. The total annual allowances payable to all children shall never exceed seventy-five percent of the annual allowance that would have been payable to a surviving spouse or surviving domestic partner if there were a surviving spouse or surviving domestic partner.
- C. Subject to other provisions of this chapter, in any of the situations specified in Section 3.28.1470, if at the time of said member's death there is a surviving spouse or surviving domestic partner but payment of an annual allowance to said surviving spouse or surviving domestic partner ceases because of his or her death or marriage or because he or she has established a subsequent registered domestic partnership, and if at the time of cessation of said surviving spouse's or surviving domestic partner's allowance there is or are one or more eligible surviving child or children, then in such event, the following annual allowance or allowances shall be payable, upon cessation of said surviving spouse's or surviving domestic partner's allowance, to the eligible surviving child or children then in existence, as follows:
1. If only one eligible surviving child exists after the surviving spouse's or surviving domestic partner's allowance ceases, such child shall be entitled to receive and shall be paid, from the retirement fund, until he or she attains the age of eighteen years, marries, establishes a registered domestic partnership, or dies, whichever is earlier, an annual allowance equal to twenty-five percent of the annual allowance which was theretofore payable under subsection A. of this section to the surviving spouse or surviving domestic partner.
  2. If two or more eligible surviving children exist after the surviving spouse's or surviving domestic partner's allowance ceases, each such child shall be entitled to receive and shall be paid, from the retirement fund, until he or she attains the age of eighteen years, marries, establishes a registered domestic partnership, or dies, whichever is earlier, an annual allowance equal to that proportion of the annual

allowance which the surviving spouse or surviving domestic partner was theretofore entitled to receive under subsection A. of this section, which one bears to the total number of eligible surviving children in existence at the time any such allowance becomes payable, subject to the following limitations:

- a. The annual allowance payable to any surviving child shall never exceed twenty-five percent of the annual allowance theretofore payable under subsection A of this section to the surviving spouse or surviving domestic partner; and
- b. The total annual allowances payable to all the children shall never exceed seventy-five percent of the annual allowance theretofore payable under subsection A of this section to the surviving spouse or surviving domestic partner.

(Prior code § 2904.1507; Ord. 27521.)

**3.28.1490** Benefits payable where deceased member was formerly a member of Chapter 3.24 retirement system and became a member of this system under Sections 3.28.410, 3.28.420, or 3.28.430 and surviving spouse, surviving domestic partner or children are not eligible for allowance under Sections 3.28.1470 and 3.28.1480.

Subject to other provisions of this Chapter 3.28, upon death before retirement of a member who formerly was a member of the Chapter 3.24 retirement system and who became a member of this system under and pursuant to the provisions of Sections 3.28.410, 3.28.420, 3.28.430, if at the time of his or her death said member was credited with accumulated contributions of five hundred dollars or more, the following benefits shall be payable and shall be paid, from the retirement fund, to the following persons in the following circumstances:

- A. If at the time of said member's death there is or are a surviving spouse, surviving domestic partner or surviving child or children but none of them is entitled to an allowance under and pursuant to the provisions of Sections 3.28.1470 and 3.28.1480, and if, in addition, the deceased member, as of the time of his or her death, had

attained the minimum age for voluntary service retirement and was entitled to credit for twenty or more years of federated city service, an annual allowance, equal to one-half of the unmodified retirement allowance which said member would have been entitled to if he or she had retired for service on the date of death instead of dying, shall be payable as follows to the following persons:

1. If the deceased is survived by a surviving spouse or surviving domestic partner, said allowance shall be paid to the surviving spouse or surviving domestic partner until he or she dies.
2. If there is no surviving spouse or surviving domestic partner but there is only one eligible child, said allowance shall be paid to the surviving child until he or she attains the age of eighteen years, marries, establishes a registered domestic partnership, or dies, whichever is earlier.
3. If there is no surviving spouse or surviving domestic partner but there are two or more eligible surviving children, each surviving child shall be paid, until he or she attains the age of eighteen years, marries, establishes a registered domestic partnership, or dies, whichever is earlier, an annual allowance equal to that proportion of the annual allowance which would have been payable to a surviving spouse or surviving domestic partner if he or she had existed which one bears to the total number of eligible surviving children in existence at the time any such allowance becomes payable.
4. If there is a surviving spouse or surviving domestic partner but he or she dies and at the time of the death there is only one eligible surviving child, such child shall thereafter be paid, until he or she attains the age of eighteen years, marries, establishes a registered domestic partnership, or dies, whichever is earlier, the same annual allowance as was theretofore paid to the surviving spouse or surviving domestic partner.
5. If there is a surviving spouse or surviving domestic partner but he or she dies and at the time of the death there are two or more eligible surviving children, each such child shall thereafter be paid, until he or she attains the age of eighteen years, marries,

establishes a registered domestic partnership, or dies, whichever is earlier, an annual allowance equal to that proportion of the annual allowance theretofore paid to the surviving spouse or surviving domestic partner as one bears to the total number of eligible surviving children in existence at the time any such allowance becomes payable.

6. If at the time of said member's death there is no surviving spouse, no surviving domestic partner, and no eligible surviving child or children, no allowance shall be payable under this section.
- B. If the amount of all allowances paid or payable under the foregoing provisions of this section is less than the amount of the death benefit which would be payable under the provisions of Section 3.28.1500 to the estate or beneficiary of the deceased member in the circumstances specified in such Section 3.28.1500, then in such event the amount of said death benefit less the total amount of all allowances paid and payable under the foregoing provisions of this section shall be paid, when no allowances are any longer payable under this section, to such child or children of the deceased member as may then exist who no longer are entitled to an allowance under the foregoing provisions of this section, or, if there are no such children at such time, to the estate of said deceased member.
- C. The benefits hereinabove provided in this section are in lieu of the death benefits which would be payable to the estate or designated beneficiary of the deceased member under and pursuant to the provisions of Section 3.28.1500 in the circumstances specified in said Section 3.28.1500. However, the surviving spouse or surviving domestic partner or, if there is no surviving spouse or surviving domestic partner, all of the surviving children, may elect before any allowance is paid to any person under the foregoing provisions of this section, to have the death benefit specified in Section 3.28.1500 paid to whomsoever may become entitled to it under the provisions of Section 3.28.1500, in lieu of having any benefits paid under or pursuant to the foregoing provisions of this section; and, in such event, no benefits whatsoever shall be paid or be payable to any person under the provisions of this section but said death benefit shall thereupon become payable under the provisions of Section

3.28.1500 to whomsoever may be entitled to the same under Section 3.28.1500. Any election made pursuant to the provisions of this subsection shall be in writing and must be filed with the retirement board before any allowance or benefit is paid to any person under this Section 3.28.1490.

(Prior code § 2904.1508; Ord. 27521.)

### 3.28.1500 Death benefit - Description and conditions.

- A. If, upon death before retirement of a member, no person is or becomes entitled to any benefits under any of the foregoing provisions of this Part 11, there shall be paid to the deceased member's estate, or to a beneficiary named by him if he elects to have such beneficiary receive such benefit in lieu of having it go to his estate, a death benefit equal to the amount of all of the deceased member's accumulated contributions in this system plus the following: One-twelfth of the annual compensation earned (or compensation earnable, if such is greater) by the deceased member during the twelve months immediately preceding his death times the number of years of federated city service to which such deceased member was entitled to credit as of the date of his death; provided and excepting, however, that the amount payable under this paragraph shall not exceed one-half of the compensation earned (or compensation earnable, if such is greater) by the deceased member in said twelve-month period.
- B. A member may at any time designate, by a writing filed with the board, a beneficiary to receive such benefits as may be payable to his beneficiary or estate under this section.
- C. Except as hereinafter otherwise provided, the designation of beneficiary may be by class, subject to such conditions as may be imposed by board rule, in which such members of the class as are in being at the time of the member's death shall be the beneficiary.
- D. The right of any person designated as a beneficiary by a member to any benefits hereunder shall also be subject to the board's conclusive determination, upon evidence satisfactory to it of the existence, identity or other facts relating to entitlement of such person so designated as beneficiary, and payment made by the system in reliance on any such determination made in good faith, notwithstanding that it may not have discovered

a beneficiary otherwise entitled to share in the benefit, shall constitute a complete discharge and release of the system from further liability for the benefit.

- E. The designation of a beneficiary under this section may be revoked at the pleasure of the person who made it and a different beneficiary designated by a writing filed with the board.
- F. The designation of the beneficiary by a member is not affected by termination of nor a break in his membership.

(Prior code § 2904.1509.)

### 3.28.1510 Death benefit - Election for payment in installments.

An election may be made to have the death benefit specified in Section 3.28.1500 paid in installments as follows:

- A. A member may elect by a writing filed with the board to have all or part of the death benefit paid in monthly (or biweekly, if the city elects to pay in biweekly installments) installments, fixed in number or amount and not involving life contingency, subject to such rules as the board may adopt. Regular interest shall be credited on the unpaid balance of benefits payable.
- B. If a member dies without having made an election under subsection A. of this section, his beneficiary, after the death of the member and prior to the payment to him of the death benefit, or any part thereof, may elect by writing filed with the board to have the death benefit paid to him in the manner provided in subsection A. of this section.
- C. When an election has been made to have the death benefit paid in accordance with subsection A. of this section, the first of such installments shall be paid on the first day of the month of two-week period next following the date when the death benefit would otherwise be payable, and one of such installments shall be paid on the first day of each month or two-week period thereafter. Such monthly or biweekly installment shall be the actuarial equivalent of the portion of the death benefit to be paid in installments on the date that such death benefit would otherwise be payable.

(Prior code § 2904.1510.)

### 3.28.1520 Surviving child's or children's allowances - How paid.

- A. Except as otherwise provided in this chapter, any survivorship allowance which is payable under the provisions of this chapter to any surviving

child or children shall be paid to such parent or parents of such child or children as have custody of such child or children, for the benefit of such child or children, or if a guardian or guardians have been appointed for such child or children, and the board shall have received notice thereof, to the guardian or guardians of such child or children, for the benefit of such child or children.

B. Notwithstanding the above, however, the board, in its discretion, may at any time or from time to time pay said allowances to any other person or persons, for the benefit of such child or children, or directly to the child or children, if it finds that such will be for the best interest of the children. In addition, the board may, if it has reason to believe that such allowances are not being used for the benefit of the child or children entitled thereto, suspend such payments, or any of them, until such time as it receives assurance, satisfactory to the board, that such payments will be used for the benefit of the children entitled thereto. No person shall have any claim against the board or any member thereof because of or by reason of the board's suspension of any payments or by reason of the board's changing the person or persons to whom such payments are made.

(Prior code § 2904.1511; Ord. 22429.)

### 3.28.1525 Surviving children's allowances - Payment to custodian or trustee.

- A. A member of this system or any person who has retired from this system may designate, on a beneficiary designation form approved by the board, that any survivorship allowance which is payable under the provisions of this chapter to any surviving child or children of the member or retired person shall be paid to any of the following:
  1. A named custodian for such child under the California Uniform Transfers to Minors Act.
  2. A trustee of a trust created for the benefit of such child or children under such member's or retired person's will.
  3. A trustee of an inter vivos trust created for the benefit of such child or children.
- B. Payment to Custodian. Such survivorship allowance shall be paid to a custodian under the California Uniform Transfers to Minors Act named in a beneficiary designation form if all of the following conditions are met:

1. The board is provided with proof to the board's satisfaction that such person is in fact the custodian named in the beneficiary designation form.
  2. The board is provided with written acknowledgement of receipt of payment as custodian, as provided by California Probate Code Section 3908, on such form as the board may provide, together with execution of such additional waivers, indemnification, or other documents as the board may require.
- C. Payment to Trustee of Testamentary Trust. Such survivorship allowance shall be paid to a trustee named in a member's or retired person's will if all of the following conditions are met:
1. Such member's or retired person's beneficiary designation form specifically designates a trust created under such person's will as beneficiary.
  2. Such member's or retired person's will contains provisions specifically creating such trust or trusts for the benefit of such member's or retired person's surviving child or children.
  3. The trustee is named in such member's or retired person's will.
  4. The board is provided with a filed, endorsed, and certified copy of a court order which determines the validity of such trust or trusts and orders the establishment of such trust or trusts.
- D. Payment to Trustee of Inter Vivos Trust. Such survivorship allowance shall be paid to the trustee of an inter vivos trust if all of the following conditions are met:
1. Such trust is clearly identified to the board's satisfaction on such member's or retired person's beneficiary designation form on file with the board.
  2. Such trust contains provisions specifically creating a trust or trusts for the benefit of such member's or retired person's surviving child or children.
  3. The board is provided with a filed, endorsed, and certified copy of a court order pursuant to California Probate Code Section 1138.1 or similar statute authorizing and approving payment of such benefit to such trust.
- E. Unless and until the conditions of either B., C., or D. of this Section 3.28.1525 are met, the

payment of such survivorship allowance shall be made in accordance with Section 3.28.1520 of this chapter. (Ord. 22429.)

### 3.28.1530 Posthumous children.

For purposes of this part, a posthumously born child shall be deemed to be a surviving child in existence at the time of the member's death, but shall not be entitled to any allowance hereunder for any time prior to its actual birth. (Prior code § 2904.1512.)

## Part 12

### DEATH AFTER RETIREMENT

#### Sections:

- 3.28.1550 Applicability of Part 12 provisions.
- 3.28.1560 Definitions.
- 3.28.1570 Eligibility for allowance.
- 3.28.1580 Allowance to surviving spouse if eligible under Section 3.28.1570.
- 3.28.1590 Allowance to surviving child or children, if eligible under Section 3.28.1570, where there is no surviving spouse or surviving domestic partner.
- 3.28.1600 Allowance to surviving child or children, if eligible under Section 3.28.1570, where surviving spouse or surviving domestic partner dies after receiving an allowance.
- 3.28.1610 Surviving child's or children's allowances - How paid.
- 3.28.1620 Special death benefit.
- 3.28.1630 Posthumous children.

### 3.28.1550 Applicability of Part 12 provisions.

Except as may be otherwise specifically provided by other provisions of this Chapter 3.28, the provisions of this Part 12 shall apply only when a member of this system dies after he has been retired pursuant to the provisions of this system and while he is so retired.

(Prior code § 2904.1550.)

**3.28.1560 Definitions.**

As used in this Part 12:

- A. "Death after retirement" means death of a former member of this system after he or she has been retired under this system and while he or she is on such retirement.
- B. "Surviving child" and "surviving children" mean such child or children of a deceased member that meet and satisfy all of the following conditions and requirements:
  - 1. The child survives the member's death; and
  - 2. The child is neither married nor a member of a registered domestic partnership at the time of the member's death; and
  - 3. The child is under the age of eighteen years at the time of the member's death; and
  - 4. If the child is an adopted child of the member, the adoption was completed pursuant to law prior to the member's death.

A child who has been married, but whose marriage has been dissolved by divorce or death, shall not be deemed to be a surviving child as said term is used in this Part 12. A child who has been a member of a registered domestic partnership, but whose partnership has been terminated through a proceeding for dissolution or by filing a notice of termination of domestic partnership or by death, shall not be deemed to be a surviving child as said term is used in this Part 12.
- C. "Surviving spouse" means the person to whom a person retired under the provisions of this system was married both at the time of such retired person's retirement and at the time of such retired person's death who survives such retired person's death, and none other.
- D. "Surviving domestic partner" means the person:
  - 1. With whom a person retired under the provisions of this system had established a registered domestic partnership by filing a declaration of domestic partnership with the secretary of state pursuant to Division 2.5 of the California Family Code or had formed a legal union other than a marriage in a jurisdiction other than California and such union is recognized as a domestic partnership pursuant to California Family Code Section 299.2; and
  - 2. Was in the domestic partnership with the retired person both at the time of such

retired person's retirement and at the time of such retired person's death; and

- 3. Who survives the retired person's death. (Prior code, §§ 2904.1551-2904.1553; Ords. 23806, 27521.)

**3.28.1570 Eligibility for allowance.**

The benefits hereinafter specified in Sections 3.28.1580, 3.28.1590 and 3.28.1600 of this part shall be payable to the person specified in said sections in each of the following situations, and none other:

- A. Upon the death after retirement of a former member who at the time of retirement was entitled to credit for five or more years of federated city service rendered after June 30, 1975, while he or she was a member of this system;
- B. Upon the death after retirement of a former member who was a former member of the Chapter 3.24 retirement system who became a member of this system pursuant to the provisions of Section 3.28.400 and who, in addition, had five hundred dollars or more of accumulated contributions in the retirement fund at the time of retirement under this system;
- C. Upon the death after retirement of a former member who became a member of this system pursuant to a transfer of communication functions from the county of Santa Clara to the city of San José and who was granted a retirement pursuant to Section 3.28.1110A.3. of this chapter. (Prior code § 2904.1554; Ords. 21371, 22314, 23485.)

**3.28.1580 Allowance to surviving spouse if eligible under Section 3.28.1570.**

Subject to other provisions of this Chapter 3.28, in any of the situations specified in Section 3.28.1570, the surviving spouse or the surviving domestic partner, if any, of such deceased person shall thereafter be entitled to receive and shall be paid from the retirement fund, until the surviving spouse's or surviving domestic partner's death, an annual allowance equal to fifty percent of the amount of retirement allowance to which said deceased former member was theretofore entitled to receive under this system.

(Prior code § 2904.1555; 27521.)

**3.28.1590 Allowance to surviving child or children, if eligible under Section 3.28.1570, where there is no surviving spouse or surviving domestic partner.**

Subject to other provisions of this Chapter 3.28, in any of the situations specified in Section 3.28.1570, if at the time of such former member's death after retirement there is no surviving spouse and no surviving domestic partner, but there is or are a surviving child or surviving children, the following allowances shall be paid to such surviving child or children:

- A. If there is only one eligible surviving child, such child shall be entitled to receive and shall be paid from the retirement fund, until he or she attains the age of eighteen years, marries, establishes a registered domestic partnership, or dies, whichever is earlier, an annual allowance equal to twenty-five percent of the allowance to which a surviving spouse or surviving domestic partner would have been entitled under the provisions of Section 3.28.1570 if there had been a surviving spouse or surviving domestic partner.
- B. If there are two or more surviving children, each eligible surviving child thereafter in existence shall be entitled to receive and shall be paid, from the retirement fund, until he or she attains the age of eighteen years, marries, establishes a registered domestic partnership, or dies, whichever is earlier, an annual allowance equal to that proportion of the allowance which would have been payable to a surviving spouse or surviving domestic partner under Section 3.28.1580 if there had been a surviving spouse or surviving domestic partner which one bears to the total number of eligible surviving children in existence at the time any such allowance becomes payable, subject to the following limitations:
  - 1. The annual allowance payable to any surviving child under this subsection B. shall never exceed twenty-five percent of the annual allowance which would have been payable to a surviving spouse or surviving domestic partner under Section 3.28.1580 if there had been a surviving spouse or surviving domestic partner, and;
  - 2. The total allowances payable to all surviving children under this subsection B. shall never exceed seventy-five percent of the annual allowance which would have been payable to a surviving spouse or surviving domestic

partner under Section 3.28.1580 if there had been a surviving spouse or surviving domestic partner.

(Prior code § 2904.1556; Ord. 27521.)

**3.28.1600 Allowance to surviving child or children, if eligible under Section 3.28.1570, where surviving spouse or surviving domestic partner dies after receiving an allowance.**

Subject to other provisions of this Chapter 3.28, in any of the situations specified in Section 3.28.1570, if at the time of such former member's death after retirement there is a surviving spouse or surviving domestic partner but he or she subsequently dies, any eligible surviving child or children existing at the time of the surviving spouse's or surviving domestic partner's death and surviving thereafter shall be entitled, upon cessation of the surviving spouse's or surviving domestic partner's allowance, to receive the following:

- A. If only one eligible surviving child exists after the death of the surviving spouse or surviving domestic partner and cessation of his or her allowance, such child shall be entitled to receive and shall be paid from the retirement fund, until he or she attains the age of eighteen years, marries, establishes a registered domestic partnership, or dies, whichever is earlier, an annual allowance equal to twenty-five percent of the annual allowance to which the surviving spouse or surviving domestic partner was theretofore entitled under Section 3.28.1580.
- B. If two or more eligible surviving children exist after the death of the surviving spouse or surviving domestic partner and cessation of his or her allowance, each surviving child thereafter in existence shall be entitled to receive and shall be paid from the retirement fund, until he or she attains the age of eighteen years, marries, establishes a registered domestic partnership, or dies, whichever is earlier, an annual allowance equal to that proportion of the annual allowance which the surviving spouse or surviving domestic partner theretofore was entitled to receive under Section 3.28.1570, which one bears to the total number of eligible surviving children in existence at the time any such allowance becomes payable, subject to the following limitations:
  - 1. The annual allowance payable to any surviving child shall never exceed twenty-five percent of the annual allowance

therefore paid to the surviving spouse or surviving domestic partner under Section 3.28.1580, and;

2. The total annual allowance paid to all surviving children shall never exceed seventy-five percent of the annual allowance theretofore paid to the surviving spouse or surviving domestic partner under Section 3.28.1570.

(Prior code § 2904.1557; Ord. 27521.)

### 3.28.1610 Surviving child's or children's allowances - How paid.

Except as otherwise provided herein, any survivorship allowance which is payable under the provisions of this chapter to any surviving child or children shall be paid to such parent or parents of such child or children as have custody of such child or children for the benefit of such child or children; or, if a guardian or guardians have been appointed for such child or children and the board shall have received notice thereof, to the guardian or guardians of such child or children for the benefit of such child or children. Notwithstanding the above, however, the board, in its discretion, may at any time or from time to time pay said allowances to any other person or persons, for the benefit of such child or children, or directly to the child or children, if it finds that such will be for the best interests of the children. In addition, the board may, if it has reason to believe that such allowances are not being used for the benefit of the child or children entitled thereto, suspend such payments, or any of them, until such time as it receives assurance; satisfactory to the board, that such payments will be used for the benefit of the children entitled thereto. No person shall have any claim against the board or any member thereof because of or by reason of the board's changing the person or persons to whom such payments are made.

(Prior code § 2904.1559.)

### 3.28.1620 Special death benefit.

Subject to other provisions of this Chapter 3.28, upon the death after retirement of a former member of this system, there shall be paid to his estate, or to such beneficiary as he may designate by written designation filed with the retirement board, the sum of five hundred dollars. This benefit is additional to such other benefits as may be provided by other provisions of this system.

(Prior code § 2904.1560.)

### 3.28.1630 Posthumous children.

For purposes of this Part 12, a posthumously born child shall be deemed to be a surviving child in existence at the time of said former member's death, but shall not be entitled to any allowance hereunder for any time prior to its actual birth.

(Prior code § 2904.1561.)

## Part 13

### OPTIONAL SETTLEMENTS

#### Sections:

3.28.1650 Election to change retirement allowance.

3.28.1660 Manner and time of election.

3.28.1670 Optional settlement one.

3.28.1680 Optional settlement two.

3.28.1690 Optional settlement three.

3.28.1700 Existence of surviving spouse, surviving domestic partner, or surviving child or children at time of member's or retiree's death.

3.28.1710 Designation of beneficiaries.

3.28.1720 Actuarial equivalences.

### 3.28.1650 Election to change retirement allowance.

Subject to the provisions of this chapter, and subject particularly to the provisions of Section 3.28.1700 of this part, a person who is a member of this system or who has retired under this system may elect, in the manner and within the time specified in Section 3.28.1660, to have the actuarial equivalent of any retirement allowance to which such person may become or has become entitled under this system applied in accordance with any one of the optional settlements specified in this part as follows:

- A. To a lesser retirement allowance for himself or herself during such person's life; and
- B. To an allowance to a beneficiary, named by such person, to be paid after such person's death.

(Prior code § 2904.1600; Ord. 23736.)

### 3.28.1660 Manner and time of election.

- A. No election made or attempted to be made by any person pursuant to the provisions of this part shall be deemed valid unless the election is in writing and is filed with the retirement board or



its secretary on or before, but no later than, the thirtieth day from and after the effective date of such person's retirement.

- B. Any election made pursuant to the provisions of this part may be amended or revoked by the person who made it, provided such amendment or revocation is in writing and is filed with the retirement board or its secretary on or before, but no later than, the thirtieth day from and after the effective date of such person's retirement. If an election has been revoked, a new one may be made in the manner and time specified in subsection A. of this section.
- C. Any election made pursuant to the provisions of this part that is not amended or revoked on or before the thirtieth day from and after the effective date of such person's retirement shall be irrevocable and benefits shall be paid in accordance with such election subject only to the provisions of this chapter.

(Prior code § 2904.1601; Ord. 23736.)

### 3.28.1670 Optional settlement one.

Optional settlement one consists of the right to have a lesser retirement allowance paid to the retiree until the retiree's death, and thereafter, subject to the provisions of Section 3.28.1700, to have one hundred percent of the retiree's modified retirement allowance paid to the retiree's designated beneficiary for the life of the beneficiary.

(Prior code § 2904.1602; Ord. 23736.)

### 3.28.1680 Optional settlement two.

Optional settlement two consists of the right to have a lesser retirement allowance paid to the retiree until the retiree's death, and thereafter, subject to the provisions of Section 3.28.1700, to have one-half of the retiree's modified retirement allowance paid to the retiree's designated beneficiary for the life of the beneficiary.

(Prior code § 2904.1603; Ord. 23736.)

### 3.28.1690 Optional settlement three.

- A. Optional settlement three consists of the right to have a lesser retirement allowance paid to the retiree until the retiree's death, and thereafter, subject to the provisions of Section 3.28.1700 and subsection B of this section, to have such percentage of the modified retirement allowance as the retiree may select, subject to approval of the retirement board, paid to the retiree's designated beneficiary for the life of the beneficiary.

- B. In no case shall the actuarial equivalent of benefits payable to a beneficiary under this optional settlement three exceed the actuarial equivalent of the benefits payable to the same beneficiary if optional settlement one had been selected.
- C. If at the time an election for an optional settlement may be made pursuant to Section 3.28.1660 there exists a spouse, domestic partner registered under Division 2.5 of the California Family Code or child of the person making the election who would be entitled to benefits under Part 11 or 12 of this chapter upon the death of said person, then this optional settlement three shall not be available to said person and no election of this optional settlement three shall become effective.

(Prior code § 2904.1604; Ords. 23736, 27521.)

### 3.28.1700 Existence of surviving spouse, surviving domestic partner, or surviving child or children at time of member's or retiree's death.

- A. If a member or retiree has elected an optional settlement as set forth in Section 3.28.1670, 3.28.1680 or 3.28.1690 and has named a person other than the member's or retiree's surviving spouse or surviving domestic partner, and at the time of the member's or retiree's death there exists a surviving spouse, a surviving domestic partner or surviving child or children, then:
  1. No benefits shall be paid to the designated beneficiary under the elected optional settlement; and
  2. The benefits provided under Part 11, 12 or 14 of this chapter, whichever is applicable, shall be paid to such surviving spouse, surviving domestic partner or surviving child or children.
- B. If at the time of the member's or retiree's death a beneficiary other than the member's or retiree's surviving spouse or surviving domestic partner should become entitled to any benefit under any optional settlement specified in Section 3.28.1670, 3.28.1680 or 3.28.1690, such benefit shall cease and terminate if and when a child or children of the member or retiree, born after the member's or retiree's death, becomes entitled to any benefits under the provisions of Part 11 or 12 of this chapter.
- C. Special Provisions for Optional Settlements. If a member or retiree has elected an optional

settlement as set forth in Section 3.28.1670 or Section 3.28.1680, and has named the member's or retiree's surviving spouse or surviving domestic partner as the designated beneficiary, then upon the member's or retiree's death:

1. The benefits payable to the designated beneficiary under such optional settlement shall be paid to such surviving spouse or surviving domestic partner for the life of the surviving spouse or surviving domestic partner. Upon the death of such surviving spouse or surviving domestic partner, the benefits payable under such optional settlement shall cease. If any surviving child or children exist at the time of the surviving spouse's or surviving domestic partner's death, such child or children shall be paid a surviving child's or surviving children's allowance under the provisions of Part 11, 12 or 14 of this chapter, whichever is applicable, as though no optional settlement had been elected.
2. If at the retiree's death there is no surviving spouse and no surviving domestic partner but there is or are a surviving child or children, then the benefit that would have been paid to the surviving spouse or surviving domestic partner under subsection C.1. above shall not be paid and a surviving child's or surviving children's allowance shall be paid under the provisions of Part 11, 12 or 14 of this chapter, whichever is applicable, as though no optional settlement had been elected.
- D. For the purposes of this part:
  1. "Surviving spouse" means the person defined as a surviving spouse in Section 3.28.1460 or Section 3.28.1560, whichever section is applicable under the circumstances.
  2. "Surviving domestic partner" means the person defined as a surviving domestic partner in Section 3.28.1460 or Section 3.28.1560, whichever section is applicable under the circumstances.
  3. "Surviving child" and "surviving children" mean the person or persons defined as a surviving child or surviving children in Section 3.28.1460, Section 3.28.1560 or Section 3.28.1750, whichever section is applicable under the circumstances.

4. A posthumously born child shall be deemed to be a surviving child in existence at the time of the member's or retiree's death, and shall be entitled to benefits under this part as provided for other surviving children.

(Prior code § 2904.1605; Ords. 23736, 27521.)

### 3.28.1710 Designation of beneficiaries.

- A. The person electing any of the optional settlements specified in Section 3.28.1670, 3.28.1680 and 3.28.1690 shall designate in writing the beneficiary who shall be entitled to receive benefits under such optional settlement. The beneficiary so designated must be a natural person; it cannot be a corporation, nor can it be a class of natural or other persons.
- B. If the person electing any of the optional settlements specified in Section 3.28.1670 and 3.28.1680 is married at the time of such election, is a domestic partner in a domestic partnership registered pursuant to Division 2.5 of the California Family Code or in a legal union other than a marriage that is recognized as a domestic partnership pursuant to California Family Code Section 299.2, is retired at the time of such election and is married to the spouse to whom the person was married at the time of such person's retirement or is retired at the time of such election and is a partner in a domestic partnership that was registered pursuant to Division 2.5 of the California Family Code or in a legal union other than a marriage that is recognized as a domestic partnership pursuant to California Family Code Section 299.2 at the time of such person's retirement, then the person must designate his or her spouse as the beneficiary entitled to receive benefits under the optional settlement. Under these circumstances, no person other than said spouse or domestic partner shall be eligible to be a designated beneficiary and no election naming any other person as a designated beneficiary shall become effective.
- C. No person shall be entitled to any benefit as a named beneficiary in any of said optional settlements unless he or she first satisfies the retirement board, and the board determines, that he or she is in fact the beneficiary designated to receive the benefit and is otherwise entitled to receive the benefit. Any such benefit being paid to any such beneficiary, or claimed beneficiary, is subject to termination or modification at any time by the retirement board if the board should subsequently find that such person was not entitled to or is no

longer entitled to such benefit or any part thereof. Any payment of any benefit made in good faith from this system in reliance upon any abovementioned determination of the board shall constitute a complete discharge of this system's obligation respecting such benefit, to the extent of such payment, notwithstanding that it may not have discovered a beneficiary otherwise entitled to such benefit.

(Prior code § 2904.1616; Ords. 23736, 27521.)

### 3.28.1720 Actuarial equivalences.

For the purposes of this part, actuarial equivalences shall be based on a nine (9) percent interest rate and the 1983 Group Annuity Table for Males with a two-year setback, or the interest rate and annuity tables adopted by resolution of the board upon the advice of the board's actuary provided that such interest rate and annuity tables comport with reasonable standards applicable to governmental retirement plans.

(Ord. 23736; Ord. 27838.)

## Part 14

### SURVIVING CHILD'S SCHOOL ALLOWANCE

#### Sections:

- 3.28.1750 Definitions.
- 3.28.1760 Rules and regulations - Administrative determinations.
- 3.28.1770 When deemed full-time student during period of nonattendance.
- 3.28.1790 Duration of entitlement.
- 3.28.1800 Child's school allowance - Amount and conditions.

#### 3.28.1750 Definitions.

As used in this Part 14:

- A. "Educational institution" is a school (including a technical, trade or vocational school), a junior college, college or university, which meets any of the conditions described in the following subsections of this section:
  1. It is operated or directly supported by the United States, or by any state of the United States, or by any local government or political subdivision thereof; or
  2. It is approved by a state or accredited by a state-recognized or nationally recognized accrediting agency or body. A nationally recognized accrediting agency or body is an agency or body that has been determined to

be such by the United States Commissioner of Education. A state-recognized accrediting agency or body is an agency or body designated or recognized by a state as a proper authority for accrediting schools, colleges or universities as meeting educational standards. Approval by a state includes approval of a school, college or university as an educational institution, or of one or more of the school's, college's or university's courses by a state agency or subdivision of the state. This approval may be indirect, as for example, if attendance at the school satisfies the state's compulsory education laws, or if the school has tax exemption as a school, or if the school receives financial aid, loans or scholarship allowances; or

- 3. In the case of a non-accredited school, college or university, its credits are accepted, on transfer, by not less than three institutions which have been accredited by a state-recognized or nationally recognized accrediting agency or body, for credit on the same basis as if transferred from an institution so accredited. Acceptance of credits on transfer includes, in addition to acceptance of laterally transferred credits between similar institutions, acceptance of credits completed in an institution at a lower grade level for entrance into an institution at a higher grade level.

- B. "Eligible surviving child" means a surviving child as defined in subsection E of this section, who meets and satisfies all of the following conditions:

1. Such surviving child must have attained the age of eighteen years; and
2. Such surviving child must not have attained the age of twenty-two years; and
3. Such surviving child must be neither married nor a member of a registered domestic partnership; and
4. Such surviving child must be a "full-time student" as such term is defined in subsection D of this section.

- C. "Full-Time Attendance". Defined. Ordinarily, a student is in "full-time attendance" at an educational institution if he or she is enrolled in a noncorrespondence course and is carrying a subject load which is considered full-time for day students under the institution's standards and practices. However, a student will not be considered in "full-time attendance":

1. If he or she is enrolled in a junior college, college or university in a course of study of less than thirteen school weeks' duration; or

2. If he or she is enrolled in any other educational institution and either the course of study is less than thirteen school weeks' duration or his or her scheduled attendance is at the rate of less than twenty hours a week. A student whose full-time attendance begins or ends in a month is in full-time attendance for that month.

D. "Full-time student" means a student who is in "full-time attendance," as such term is defined in subsection C of this section, as a student at an "educational institution," as such term is defined in subsection A of this section, except that no student shall be deemed to be a full-time student if he or she is paid by his or her employer for attending an educational institution at the employer's request or pursuant to a requirement of the employer.

E. "Surviving child" means a child who, if he or she were under the age of eighteen years, would be deemed to be a "surviving child" as such term is defined in Parts 11 and 12 of this chapter, and as such would be entitled, if he or she were under eighteen years of age, to a surviving child's allowance under and pursuant to the provisions of Parts 11 or 12 of this chapter. "Surviving child" does not include any child who, even if he or she were under eighteen years of age, would not be entitled to a surviving child's allowance under Parts 11 or 12 because of the existence of a "surviving spouse" or "surviving domestic partner" entitled to an allowance under Parts 11 or 12 or for any other reason, although such child might subsequently become a "surviving child," as defined in this section, if and when the surviving spouse or the surviving domestic partner no longer is entitled to an allowance under Parts 11 or 12 of this chapter.

(Prior code §§ 2904.1650-2904.1654, 2904.1657; Ords. 23806, 27521.)

### 3.28.1760 Rules and regulations - Administrative determinations.

The retirement board is hereby authorized and empowered to adopt, administer and enforce all such rules and regulations, not inconsistent with the provisions of this part, as it may deem reasonably necessary for the proper administration, management, implementation, carrying out, enforcement or control of the provisions of this part or of the program provided for by the provisions of this part. In addition, retirement board is hereby authorized and empowered to make inquiries

and investigations, hold hearings, and make administrative or factual findings and determinations where it finds such to be reasonably necessary for the proper administration, management, implementation, carrying out, enforcement or control of the provisions of this part or of the program provided for by the provisions of this part. Any and all such findings and determinations of said retirement board shall be deemed final and conclusive.

(Prior code § 2904.1660.)

### 3.28.1770 When deemed full-time student during period of nonattendance.

A. An individual will be deemed a full-time student during any period of nonattendance (including part-time attendance) at an educational institution if the period is four consecutive calendar months or less, and the individual:

1. Establishes that he or she intends to be in full-time attendance at an educational institution in the month immediately following such period; or
2. Is in full-time attendance at an educational institution in the month immediately following such period.

B. However, an individual will not be deemed a full-time student during any period of nonattendance if the nonattendance is due to expulsion or suspension notwithstanding such individual intends to, or does in fact, resume full-time attendance within four calendar months after the beginning of such period of nonattendance.

(Prior code § 2904.1655.)

### 3.28.1790 Duration of entitlement.

An eligible surviving child is entitled to a surviving child's school allowance under the provisions of this part for each calendar month, after July 1, 1975, in which all the conditions of entitlement described in the preceding provisions of this part are met. The last month for which such child is entitled to a surviving child's school allowance under the provisions of this part is the month before the month in which any of the following events first occurs:

- A. The child dies; or
- B. The child marries; or
- C. The child becomes a member of a registered domestic partnership; or
- D. The child attains the age of twenty-two years; or
- E. The first month during no part of which the child is a full-time student.

(Prior code § 2904.1658; Ord. 27521.)

**3.28.1800 Child's school allowance - Amount and conditions.**

An eligible surviving child shall be entitled to receive, for each calendar month (or for each two-week period, if the city elects to pay allowances biweekly) after July 1, 1975, in which all of the conditions of entitlement described in the provisions of this Part 14 are met by him or her, and in no event for any period longer than the duration of his or her entitlement, a child's school allowance. The amount of such allowance for each calendar month (or two-week period, if allowances are paid biweekly) for which said child is eligible for the same shall be the same as the amount, if any, which would be payable to him or her for each such month (or two-week period, if allowances are paid biweekly) as a surviving child's allowance under and by virtue of the provisions of Parts 11 or 12 and other relevant provisions of this Chapter 3.28 if he or she were under the age of eighteen years. Anything in said Parts 11 or 12 or elsewhere in this chapter to the contrary notwithstanding, for the purpose of determining and computing the amount of the child's allowance which would be payable to such child under the provisions of Parts 11 or 12 if he or she were under the age of eighteen years, and also for the purpose of determining and computing the amount of the child's allowance payable under the provisions of Parts 11 or 12 to other surviving children of the parent because of whose death said child is entitled to a school allowance, the eligible surviving child claiming the school allowance shall be deemed and considered to be one of the surviving children entitled to a child's allowance under the provisions of Parts 11 or 12.  
(Prior code § 2904.1659.)

**Part 15****OPTIONAL MEMBERSHIP FOR CERTAIN MEMBERS OF CHAPTER 3.32 POLICE AND FIRE DEPARTMENT RETIREMENT PLAN****Sections:**

- 3.28.1850 Applicability of Part 15 provisions.
- 3.28.1860 Option for membership - Conditions.
- 3.28.1870 Effective membership date.
- 3.28.1880 Nature of membership.
- 3.28.1890 Credit for service.
- 3.28.1900 City's contributions.
- 3.28.1910 Contributions - Cost of living adjustments.

3.28.1920 Contributions - Failure to pay terminates membership.

3.28.1930 Persons retired for disability and returning to active duty after effective date.

**3.28.1850 Applicability of Part 15 provisions.**

The provisions of this Part 15 shall be applicable only on and after the effective date of this Part 15, and shall then apply only to those persons who, in accordance with this part, are given and exercise an option for membership in the 1975 federated employee's retirement plan established by Chapter 3.28 of this Code. (Prior code § 2904.1770; Ord. 18793.)

**3.28.1860 Option for membership - Conditions.**

A. Subject to the conditions, limitations, restrictions and requirements hereinafter set forth in this Part 15, any person who, upon the effective date of the ordinance adopting this Part 15:

1. Is a member of the police and fire department retirement system created by Ordinance 3254, adopted October 21, 1946, as continued under Chapter 3.32 of the San José Municipal Code established by Ordinance 3732; and also
2. Is employed by the city in the following position: Typist, shall have and is hereby given an option of being governed by the provisions of this Part 15 and of being entitled to such rights and benefits as are provided for in this Part 15, subject to the conditions, restrictions and requirements mentioned herein and in this Chapter 3.28, in lieu of being governed by the provisions of Chapters 3.32 and 3.36 of this Code and in lieu of being entitled to any of the rights or benefits provided in such Chapters 3.32 and 3.36. Such option is not given to any person who, on the effective date of this Part 15, is on service or disability retirement under and pursuant to Chapters 3.32 and 3.36 of this title, except as provided in Section 3.28.1930.

B. No such person to whom such option is hereinabove given shall be governed by the provisions of this Part 15, nor be entitled to any of the rights or benefits provided for in this Part 15, unless such person exercises the option herein granted, in the manner and within the time specified in this section, and no later.

C. Each such person who exercises said option within the time and in the manner specified in this section shall, on and after the exercise of such option, be governed by the provisions of this Part 15 and be entitled to the rights and benefits provided for in this part, subject to the above-mentioned conditions, limitations, restrictions and requirements, in lieu of being governed by any other chapter of this title and in lieu of being entitled to any other rights or benefits provided by other provisions of this Chapter 3.28.

D. Each person given the option specified in this section must, if he desires to exercise said option and in order to exercise the same, file with the secretary of the retirement board a written statement, on a form furnished by said secretary on request, declaring:

1. That such person elects to exercise said option and become a member of the Chapter 3.28 system subject to the provisions of this Part 15; and
2. That he elects to receive credit under this system for service for which he was entitled to credit under the Chapter 3.32 police and fire department system of which he is then a member; and
3. That he agrees to pay into the retirement fund established by this chapter, in the manner and not later than the times specified in this section, an amount of money sufficient to make the accumulated contributions standing to the credit of his individual account in this system (including interest thereon at the regular rate then prevailing under the federated system) equal to the amount such accumulated contributions would be if he had been a member of the city's federated city employees systems and federated employees retirement plan in the position to which he had been appointed and because of which he exercises the option to be a member of this system, during the time he was rendering the previous service in the police or fire department for which he seeks to receive credit, and if the contributions payable to the applicable federated system and plans under such circumstances had been deducted from his compensation and paid into the applicable retirement funds pursuant to such applicable systems and plans during all of such times; and

4. That, for the purpose of such payment, such person consents to and authorizes the transfer and payment into the retirement fund

established by this chapter, from the retirement fund established under the police and fire department retirement plan for the system of which he is then a member, all accumulated contributions credited to his individual account; and

5. That, for the purpose of paying any balance remaining after crediting the amount determined under paragraph 4. above, such person agrees to pay such balance as follows: within thirty days after filing such declaration and election, or in not more than thirty-six equal monthly installments, or seventy-two equal biweekly installments with interest thereon at the regular rate then currently prevailing under this system, the first payment commencing not more than thirty days after such filing; and

6. That, in the event any benefit becomes due and payable under this system to any person before full payment is made into the retirement fund of the total amount of such accumulated contributions, plus interest, as are required under paragraphs 3. and 5. above, such person consents to and authorizes deduction of the balance of such unpaid contributions from such benefits.

B. No such written declaration and notice of exercise of such option shall be effective for any purpose whatsoever unless it shall have been filed with the secretary of the retirement board on or before, but not later than the thirtieth day immediately following the date on which such secretary has caused to be deposited in the United States Mail, a notice of the right to exercise such option, addressed to such person at his last place of residence as shown on city's records. Forthwith after the effective date of this part, the secretary of the retirement board shall give notice of such right and option.

(Prior code § 2904.1771; Ord. 18793.)

#### 3.28.1870 Effective membership date.

Upon filing the written declaration and exercise of option described in Section 3.28.1860 with the secretary in the manner and within the time specified in Section 3.28.1860, the person making such election shall be deemed to have exercised the option granted under this Part 15; and on the day immediately succeeding the date of such filing, he shall cease to be a member of the police and fire department retirement system created under Chapter 3.32 and shall thereupon be a member of the Chapter 3.28 system subject to the provisions of this

Part 15. Upon the effective date of such membership in this Chapter 3.28 system, the person making such election and all other persons who, by reason of such person's membership in the Chapter 3.32 system, may have any right or interest in any retirement system in Title 3 of this Code other than as provided in this Part 15, shall cease to have any entitlement to any right, benefit, allowance or moneys thereunder, except as may be specifically provided in Section 3.28.1880. (Prior code § 2904.1772; Ord. 18793.)

**3.28.1880 Nature of membership.**

- A. A person who has exercised in the time and manner provided in this Part 15 the option granted herein shall be entitled to all rights and benefits of membership in the Chapter 3.28 system which are provided in this section, and is in this part referred to as a "Part 15 member."
- B. Upon the effective date of such option, the Part 15 member who exercises such option shall be deemed to be in and thereafter to be rendering "federated city service" within the definition of Section 3.28.030.10 of this chapter.
- C. A Part 15 member shall be deemed, solely for the purpose of this part, to determine qualification and the extent of rights and benefits, to be "a person who was a member of the Chapter 3.24 system who became a member of the Chapter 3.28 retirement system pursuant to the provisions of Section 3.28.400" of Part 4 of Chapter 3.28, and shall have all the rights, duties, benefits and privileges applicable to such persons by reason of Chapter 3.28 of Title 3 of this Code. Whenever the clause so enquoted above or words of similar import are used in Chapter 3.28, such clause shall for the purpose of this Part 15 mean, include and refer to such Part 15 member.
- D. For the purpose of this Part 15, and for the sole purpose of according to a Part 15 member the rights and benefits granted in Sections 3.28.1160 and 3.28.1320 to former members of this Chapter 3.24 retirement system who became members pursuant to Section 3.28.400, such Part 15 member shall be deemed to have rendered federated city service for which he was entitled credit as a member of the Chapter 3.24 retirement system to the extent that, during such time, such service was rendered as a member of the police and fire department retirement system, and such Part 15 member shall be deemed to have been a member of the Chapter 3.24 system during such service period, for the purpose of qualifying for service

and disability retirement and the optional settlement provisions therein mentioned, and the amount of such benefits and allowances therein mentioned.

(Prior code § 2904.1773; Ord. 18793.)

**3.28.1890 Credit for service.**

Notwithstanding any provision of Sections 3.28.610 and 3.28.620 to the contrary, a Part 15 member shall be entitled to credit in this system, as "federated city service," for all service rendered by such Part 15 member for which he had been entitled to credit to determine benefits under the Chapter 3.32 police and fire department retirement system of which he was formerly a member.

(Prior code § 2904.1774; Ord. 18793.)

**3.28.1900 City's contributions.**

If a person pursuant to Section 3.28.1850 elects to and becomes entitled to receive credit under this system for service formerly credited to him under the police and fire department retirement plan, the city shall contribute to the retirement fund created under this chapter an amount equal to the contributions which the city would have been required to make to the retirement funds federated systems and plans concurrently with the contributions required of the person making such election had such person been a member of such retirement systems and plans during the periods of city service instead of said Chapter 3.32 police and fire department retirement system; such contributions shall include interest on such contributions at the regular rate then prevailing under the applicable federated systems and plans. Contributions required to be made by the city pursuant to this section shall be made by the transfer and payment, into the retirement fund established by this chapter from the police and fire department fund, of all contributions made by the city into such police and fire department retirement fund for or because of such person's membership in the Chapter 3.32 police and fire department plan. If the amount of moneys so transferred is less than the amount required to be contributed by the city under this section, the balance shall be paid from other available city funds.

(Prior code § 2904.1775; Ord. 18793.)

**3.28.1910 Contributions - Cost of living adjustments.**

The contributions respectively required of a Part 15 member and the city under Sections 3.28.1860 and 3.28.1900 shall include such contributions, plus interest at the applicable prevailing rate, as are respectively

required of such member and the city to provide the funding of cost of living increases and decreases under Chapter 3.44 of this title.

(Prior code § 2904.1776; Ord. 18793.)

### 3.28.1920 Contributions - Failure to pay terminates membership.

A. A Part 15 member's failure to make any lump-sum or installment payment of contributions elected and required under Sections 3.28.1860 and 3.28.1910 within thirty days after any such payment is due shall terminate a Part 15 member's membership in the Chapter 3.28 system and all rights, benefits appertaining to such system, unless prior to such nonpayment any person has become entitled to any benefit under this system by reason of such Part 15 member shall thereupon be restored to membership in and shall be entitled only to all of the benefits of the Chapter 3.32 police and fire department system of which such person was formerly a member as if such member had continuously been and remained a member thereof, and not of the Chapter 3.28 system pursuant to this Part 15, further, upon such restoration to former membership, there shall be no further option to become a member of the Chapter 3.28 system pursuant to this Part 15.

B. Upon restoration of membership in such Chapter 3.32 system pursuant to this section, the affected member and the city shall each respectively make such contributions and transfer such funds to the Chapter 3.32 retirement fund of the system to which the member is restored, as have been credited to their respective accounts in this system's retirement fund to the extent necessary, as though the former Part 15 member's membership in such Chapter 3.32 system had remained continuous and uninterrupted by any Part 15 membership in this system. The balance of any contributions required of the member and the city for such purposes shall be made available from any available source, including deductions from such member's further compensation where required.

(Prior code § 2907.1777; Ord. 18793.)

### 3.28.1930 Persons retired for disability and returning to active duty after effective date.

A. Each person who, within six months of the effective date of the ordinance adopting this Part 15, was:

1. A member of the police and fire department retirement system established by Chapter 3.32 of this title; and
2. Employed by the city in the position of typist; and
3. Entitled to or received a disability retirement from such position pursuant to such Chapter 3.32 prior to the effective date of this part shall have the option of becoming a Part 15 member, if such person's disability should cease and such person should be restored to active service pursuant to the retirement plan established by Chapter 3.32 of this Code in the position such person held at the time of retirement for disability.

B. Such option shall be exercised in the manner provided in Section 3.28.1860, as follows:

1. Not later than the thirtieth day immediately following the date on which the secretary of the retirement board has deposited in the United States Mail, after such restoration to active duty, a notice of the right to exercise such option; or
2. If earlier, not later than the ninetieth day immediately following the date of such restoration. Upon filing such statement in the manner and time hereinabove specified, such person shall be deemed to have become a Part 15 member in the same manner and to the same extent as provided in Section 3.28.1860. Anything elsewhere to the contrary notwithstanding, no such person shall become a member of the Chapter 3.28 plan unless the option herein given is exercised as specified in this Part 15.

(Prior code § 2904.1778; Ord. 18793.)

## Part 16

### MEDICAL BENEFITS FOR CERTAIN RETIREES AND SURVIVORS

#### Sections:

- 3.28.1950 Medical benefits for retired members.
- 3.28.1960 Medical benefits for survivors of members.
- 3.28.1970 Requirements for participation in medical insurance plan.
- 3.28.1980 Allocation of costs of providing medical insurance coverage to members or survivors.



**3.28.1990 Eligible medical plan.**

**3.28.1995 Limitation on funding provided to retirement fund for medical benefits.**

**3.28.1950 Medical benefits for retired members.**

Subject to the provisions of this chapter, a member may be entitled to medical insurance coverage in an eligible medical plan as specified in Section 3.28.1970 if the member satisfies the requirements of subsection A., subsection B., or subsection C.:

- A. The member is retired for service or disability under the provisions of this chapter and at the time of such retirement meets any of the following requirements:
  - 1. Is entitled to credit for fifteen or more years of service; or
  - 2. Receives an allowance equal to at least thirty-seven and one-half percent of the final compensation of such member; or
  - 3. Would be receiving an allowance equal to at least thirty-seven and one-half percent of the final compensation of such member if the workers' compensation offset set forth in Section 3.28.1040 did not apply.
- B. The member is entitled to credit for twelve or more years of service as of May 14, 1993, and the member is retired for service on or after May 14, 1993, but prior to June 20, 1993.
- C. The member voluntarily resigns from city service and satisfies all of the following requirements:
  - 1. The effective date of the voluntary resignation is on or after May 14, 1993, but prior to June 20, 1993; and
  - 2. As of the effective date of the resignation, the member is entitled to credit for at least twelve years of service; and
  - 3. The member elects to continue membership in this system by allowing all of his or her accumulated contributions to remain in the retirement fund; and
  - 4. The member is not reinstated to city service prior to the member's retirement; and
  - 5. The member retires for service under the provisions of Section 3.28.1110.

(Ords. 21763, 22245, 24347.)

**3.28.1960 Medical benefits for survivors of members.**

Subject to the provisions of this chapter, if a surviving spouse, surviving domestic partner, child

and/or children, as those terms are defined in Sections 3.28.1460, 3.28.1560, and 3.28.1750 of this chapter, whichever is applicable, is receiving a monthly survivorship allowance pursuant to Part 11, Part 12 or Part 14 of this chapter or is receiving an optional settlement allowance pursuant to Part 13 of this chapter because of the death of a member, then said surviving spouse, surviving domestic partner, child and/or children may be entitled to medical insurance coverage in an eligible medical plan as specified in Section 3.28.1970 if the following conditions are satisfied:

- A. The member either died before receiving retirement pay or was retired either for service or disability; and
- B. At the time of the member's death, the member:
  - 1. Was entitled to credit for fifteen or more years of service; or
  - 2. Was receiving an allowance equal to at least thirty-seven and one-half percent of such member's final compensation; or
  - 3. Would have been receiving an allowance equal to at least thirty-seven and one-half percent of such member's final compensation if the workers' compensation offset set forth in Section 3.28.1010 did not apply; or
  - 4. Was retired for service between May 14, 1993, and June 19, 1993, inclusive, and was entitled to credit for twelve or more years of service; or
  - 5. Had voluntarily resigned from city service with an effective resignation date between May 14, 1993, and June 19, 1993, inclusive, had elected to remain a member of this system by allowing his or her accumulated contributions to remain in the retirement fund, and at the time of such resignation was entitled to credit for twelve or more years of service.

(Ords. 21763, 22245, 23736, 24347, 27521.)

**3.28.1970 Requirements for participation in medical insurance plan.**

- A. A member, as specified in Section 3.28.1950, above, is eligible to participate in a medical insurance plan sponsored by the city provided that the member satisfies the following requirements:

- 1. The member retires for service or disability pursuant to the provisions of this chapter; and

2. The member applies for medical insurance coverage at the time of his or her retirement in accordance with the provisions of the medical insurance plan, and agrees to pay any applicable premiums.
- B. A survivor, as specified in Section 3.28.1960, above, is eligible to participate in a medical insurance plan sponsored by the city provided that the following conditions are satisfied:
  1. The survivor is receiving a monthly survivorship allowance because of the death of a member who either died during his or her employment with the city or died after he or she terminated city employment and was retired pursuant to the provisions of this chapter; and
  2. At the time of the member's death, the member and the survivor were enrolled in one of the medical insurance plans sponsored by the city; and
  3. The survivor applies to continue medical insurance coverage at the time of the member's death, and agrees to pay any applicable premiums.
- C. A member may secure medical insurance coverage for a spouse only if the spouse and member were married at the time of said member's retirement for service or disability.
- D. A member may secure medical insurance coverage for a domestic partner only if the domestic partner and member had established a registered domestic partnership pursuant to Division 2.5 of the California Family Code or had formed a legal union other than a marriage that is recognized as a domestic partnership pursuant to California Family Code Section 299.2 at the time of said member's retirement for service or disability.
- E. A surviving spouse or surviving domestic partner shall be eligible for single coverage only, except as follows:
  1. A surviving spouse or surviving domestic partner shall be eligible for family coverage if at least one surviving child as defined in Section 3.28.1460.D., or at least one child of the surviving spouse or surviving domestic partner who is unmarried, not a member of a registered domestic partnership and under the age of eighteen years, or an eligible surviving child for purposes of receiving a school allowance as defined in Section 3.28.1750, is surviving the death of a member; in such case, if such child was enrolled in a medical insurance plan sponsored by the city at the time of the member's death.
  2. A surviving spouse or surviving domestic partner shall be eligible for family coverage if the surviving spouse or surviving domestic partner is the court-appointed guardian of the person of a minor child or children and such minor child or children are eligible for coverage under the terms of the eligible medical plan. A surviving spouse or surviving domestic partner may continue family coverage after such child reaches the age of majority in any case where, if such child had been a surviving child of the member, such child would be an eligible surviving child for purposes of receiving a school allowance pursuant to Part 14 of this Chapter.
- F. As used in this section, "medical insurance plan sponsored by the city" means an eligible medical plan as described in Section 3.28.1990, below.
- G. Notwithstanding the provisions of Sections 3.28.1970.A.1., 2., and 3., and 3.28.1970.B.1., 2., and 3., members or their survivors who would otherwise qualify for participation in a medical insurance plan pursuant to the provisions of this part, but who, at the time of retirement or death, could not enroll because the benefits provided in this part were not available at the time of the member's retirement for service or disability or death of the member, may enroll in an eligible insurance plan as provided for in this part on or before October 31, 1984. If a member or survivor does not enroll on or before October 31, 1984, then said members or their survivors must otherwise comply with the coverage limitations provided in Section 3.28.1970 and with all other provisions of this part.
- H. A surviving spouse who would otherwise qualify for family coverage because the surviving spouse is the court-appointed guardian of the person of a minor child or children but who could not enroll because the family coverage provided in subsection E. above was not available to the surviving spouse at the time of the member's death, may enroll in family coverage in an eligible insurance plan as provided for in this part until December 30, 2002, only. Said surviving spouse must otherwise comply with the coverage

limitations set forth in this Section 3.28.1970 and with all other provisions of this part.  
(Ords. 21763, 22807, 26642, 27521.)

**3.28.1980 Allocation of costs of providing medical insurance coverage to members or survivors.**

- A. The costs of premiums for medical insurance coverage in an eligible medical plan shall be paid from the medical benefits account established by Section 3.28.380 or from the trust fund established by Chapter 3.52 and by deductions from monthly allowances paid by the plan in accordance with this Section 3.28.1980. Unless otherwise determined by the trustees, payment shall be made out of the medical benefits account until the account is exhausted and thereafter out of the trust fund established by Chapter 3.52.
- B. Except as provided in Subsection C:
  1. The portion of the premium to be paid from the medical benefits account, or trust fund established by Chapter 3.52, shall be the portion that represents an amount equivalent to the lowest of the premiums for single or family medical insurance coverage, for which the member or survivor is eligible and in which the member or survivor enrolls under the provisions of this part, which is available to an employee of the city at such time as said premium is due and owing.
  2. Members or survivors shall be required to pay that portion of the premium which represents the difference between the cost of the premium for the medical plan selected by the member or the survivors and the portion paid from the medical benefits account. Such premium as is required to be paid by a member or survivor shall be deducted from the allowance payable to such member or survivor under this chapter.
- C. A surviving spouse or surviving domestic partner who is otherwise eligible only for single coverage, but who elects family coverage pursuant to Section 3.28.1970.D., shall be required to pay that portion of the medical premium which exceeds the sum of the amount payable by the surviving spouse or surviving domestic partner and the amount payable from the medical benefits account or the trust fund established by Chapter 3.52 for single coverage as provided in Subsection B. above. The portion of the premium required to be paid by the

surviving spouse or surviving domestic partner shall be deducted from the monthly allowances otherwise payable to the surviving spouse or surviving domestic partner.

(Ords. 21763, 26642, 27521, 27838, 28914.)

**3.28.1990 Eligible medical plan.**

For purposes of this Part 16, members or their survivors may secure medical insurance coverage only from an eligible medical plan with which the city has entered into a contract for the provision of hospital, medical, surgical and related benefits as part of the city's benefits to city employees.

(Ord. 21763.)

**3.28.1995 Limitation on funding provided to retirement fund for medical benefits.**

- A. It is intended that the funding provided to the retirement fund for medical benefits provided by this system meet the requirements of Internal Revenue Code Section 401(h). Subject to the requirements of the Meyers-Millas-Brown Act (California Government Code Section 3500 et seq.), the city reserves the right to amend this part to limit the funding provided to the retirement fund for the medical benefits as necessary to satisfy the requirements of said Section 401(h).
- B. In the event the contributions required to be paid into the retirement fund to fund the benefits provided by this Part 16 and the dental benefits provided by Part 17, as determined by the board's actuary, would exceed the contribution limit permitted by Internal Revenue Code Section 401(h) and the applicable regulations, the allocation of costs set forth in Section 3.28.1980 shall be adjusted as needed so that the contributions made to fund the portion paid from the medical benefits account comply with Section 401(h). The board, in consultation with its actuary, shall determine the adjustment to be implemented until this part is amended pursuant to Subsection A. above.

(Ords. 27838, 28914.)

## Part 17

DENTAL BENEFITS FOR RETIRED  
MEMBERS AND SURVIVORS

## Sections:

- 3.28.2000 Dental benefits for retired members.
- 3.28.2010 Dental benefits for survivors of members.
- 3.28.2020 Requirements for participation in dental insurance plan.
- 3.28.2030 Costs of dental insurance.
- 3.28.2040 Eligible dental plan.
- 3.28.2045 Limitation on funding for dental benefits.

**3.28.2000 Dental benefits for retired members.**

Subject to the provisions of this chapter, if a member of this system is retired for service or disability and at the time of such retirement is (i) entitled to credit for five or more years of service, or (ii) is receiving an allowance equal to at least thirty-seven and one-half percent of the final compensation of said member, or (iii) would be receiving an allowance equal to at least thirty-seven and one-half percent of the final compensation of said member if the workers' compensation offset set forth in Section 3.28.1040 did not apply, then said member may be entitled to dental insurance coverage in an eligible dental plan as specified in this part.

(Ord. 22261.)

**3.28.2010 Dental benefits for survivors of members.**

Subject to the provisions of this chapter, if a surviving spouse, surviving domestic partner, or surviving child and/or children, as those terms are defined in Sections 3.28.1460, 3.28.1560, and 3.28.1750 of this chapter, whichever is applicable, is receiving a monthly survivorship allowance pursuant to Part 11, Part 12 or Part 14 of this chapter or is receiving an optional settlement allowance pursuant to Part 13 of this chapter because of the death of a member of this system, then said surviving spouse, surviving domestic partner, or surviving child and/or children may be entitled to dental insurance coverage in an eligible dental plan as specified in this part if the following conditions are satisfied:

- A. The member either died before receiving retirement pay or was retired for either service or disability; and

## B. Such member was at the time of death:

- 1. Entitled to credit for five or more years of service; or
- 2. Was receiving an allowance equal to at least thirty-seven and one-half percent of final compensation; or
- 3. Would have been receiving an allowance equal to at least thirty-seven and one-half percent of final compensation if the workers' compensation offset set forth in Section 3.28.1040 did not apply.

(Ords. 22261, 23736, 27521.)

**3.28.2020 Requirements for participation in dental insurance plan.**

- A. A member, as specified in Section 3.28.2000 above, is eligible to participate in a dental insurance plan sponsored by the city provided that the member satisfies the following requirements:

- 1. The member terminates city employment pursuant to the retirement provisions of this chapter; and
- 2. At the time of his or her retirement, the member is enrolled in one of the dental insurance plans sponsored by the city.

- B. A survivor of a member, as specified in Section 3.28.2010 above, is eligible to participate in a dental insurance plan sponsored by the city provided that the survivor satisfies the following requirements:

- 1. The survivor is receiving a monthly survivorship allowance because of the death of a member who either died during his or her employment with the city or died after he or she terminated city employment pursuant to the retirement provisions of this chapter; and
- 2. At the time of the member's death, the member and the survivor were enrolled in one of the dental insurance plans sponsored by the city.

- C. Notwithstanding the provisions of subsections A. and B. of this section, all retired members and survivors of members who meet the qualifications set forth in Section 3.28.2000 or Section 3.28.2010 and who receive a retirement or survivorship allowance for the month of July 1986 shall automatically be enrolled in an eligible dental insurance plan as specified in this part.

(Ord. 22261.)

**3.28.2030 Costs of dental insurance.**

The cost of providing dental insurance coverage as provided in this part shall be borne by and paid from the medical benefits account established by Section 3.28.380 or from the trust fund established by Chapter 3.52. Unless otherwise determined by the trustees, payment shall be made out of the medical benefits account until the account is exhausted and thereafter out of the trust fund established by Chapter 3.52.

(Ords. 22261, 27838, 28914.)

**3.28.2040 Eligible dental plan.**

For the purposes of this part, members or their survivors may secure dental insurance coverage only from an eligible dental plan with which the city has entered into a contract for the provision of dental benefits as part of the city's benefits to city employees.

(Ord. 22261.)

**3.28.2045 Limitation on funding for dental benefits.**

- A. It is intended that the funding provided to the retirement fund for dental benefits provided by this system meet the requirements of Internal Revenue Code Section 401(h). Subject to the requirements of the Meyers-Millias-Brown Act (California Government Code Section 3500 et seq.), the city reserves the right to amend this part to allocate costs of providing dental medical benefits as necessary to satisfy the requirements of said Section 401(h).
- B. In the event the contributions required to be paid into the retirement fund to fund the benefits provided by this Part 17 and the medical benefits provided by Part 16, as determined by the board's actuary, would exceed the contribution limit permitted by Internal Revenue Code Section 401(h) and the applicable regulations, then Section 3.28.2030 notwithstanding, all or a portion of the costs set forth in Section 3.28.2030 may be allocated to the retiree, former member or survivor covered by the dental plan as needed so that the contributions made to fund the portion paid from the medical benefits account comply with Section 401(h). The board, in consultation with its actuary, shall determine the allocation to be implemented until this system is amended pursuant to Subsection A. above.

(Ords. 27838, 28914.)

**Part 18****1987 EARLY RETIREMENT INCENTIVE PROGRAM****Sections:**

- 3.28.2100 Establishment.
- 3.28.2110 Eligibility requirements.
- 3.28.2120 Benefits incentive.
- 3.28.2130 Payout of leave balances.
- 3.28.2140 Part 9 applicability.
- 3.28.2150 Additional costs borne by city.

**3.28.2100 Establishment.**

There is hereby established the 1987 Early Retirement Incentive Program for those members of this system who meet the eligibility requirements of Section 3.28.2110.

(Ord. 22573.)

**3.28.2110 Eligibility requirements.**

A member of this system who is performing federated city service on June 23, 1987, who continues to perform such service through October 3, 1987, and who meets all of the following eligibility requirements may participate in the early retirement incentive program established by this part and may be retired for service thereunder:

- A. The member must, as of October 3, 1987, be entitled to credit for at least fifteen years of federated city service, as described in Section 3.28.610.B, subsections 1. through 6., of which not less than five years were rendered after the member became and while the member was a member of this system.
- B. The member must, as of October 3, 1987, either:
  1. Be at least fifty-two years of age; or
  2. Be entitled to credit for at least twenty-seven years of federated city service.
- C. The member must file his or her written application for retirement for service pursuant to this chapter during the period of time from June 23, 1987, to September 15, 1987, inclusive.
- D. The member's retirement for service must become effective on October 4, 1987.

(Ord. 22573.)

**3.28.2120 Benefits incentive.**

Any provision of this chapter to the contrary notwithstanding, for the purpose of determining the amount of the monthly retirement allowance under

Section 3.28.1110. C., 3.28.1120. B., or 3.28.1130. B., a member who retires for service pursuant to Section 3.28.2110 shall be entitled to credit for federated city service, in addition to the federated city service credit described in Section 3.28.610.B, subsections 1 through 6 which was earned by such member as of the date of retirement, as follows:

- A. A member who is at least fifty-five years of age and is entitled to credit for at least fifteen years of federated city service shall receive credit for one additional full year of federated city service.
- B. Except as provided in subsection D., a member who is at least fifty-two years of age but less than fifty-five years of age and who is entitled to credit for at least fifteen years of federated city service shall receive credit for one additional full year of federated city service for each year between such member's age on the date of retirement and fifty-five years, calculated as follows:

<i>Age</i>	<i>Additional Service Credit</i>
At least 52, but less than 53	3 years
At least 53, but less than 54	2 years
At least 54, but less than 55	1 year

- C. Except as provided in subsection D., a member who is entitled to credit for at least twenty-seven years but less than thirty years of federated city service and is less than fifty-five years of age shall receive one additional full year of federated city service credit for each year between the number of years of earned service credit on the date of retirement and thirty years, calculated as follows:

<i>Age</i>	<i>Additional Service Credit</i>
At least 27, but less than 28	3 years
At least 28, but less than 29	2 years
At least 29, but less than 30	1 year

- D. A member who is at least fifty-two years of age but less than fifty-five years of age and who is entitled to credit for at least twenty-seven years but less than thirty years of federated city service shall receive credit for additional federated city service as described in subsection B. or C., whichever is less.

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E. Any other provision herein notwithstanding, in no event shall the member's monthly retirement allowance exceed a maximum of seventy-five percent of the member's final compensation.  
(Ord. 22573.)

### 3.28.2130 Payout of leave balances.

Whenever any member who retires pursuant to Section 3.28.2110 is entitled to payout for accumulated sick leave, vacation and/or compensatory time, such payout shall be in two equal installments. The first installment shall be payable upon retirement. The second installment shall be payable on August 1, 1988.  
(Ord. 22573.)

### 3.28.2140 Part 9 applicability.

The provisions of Part 9 of this chapter which are not inconsistent with or contrary to the provisions of this Part 18 shall apply to all persons who retire pursuant to Section 3.28.2110.  
(Ord. 22573.)

### 3.28.2150 Additional costs borne by city.

The city shall contribute to the retirement fund such amounts as are actuarially determined to be necessary to provide funding for all additional costs incurred by this retirement system because of the benefits provided by this part to any city officers or employees which would not have been provided absent the adoption of this part.  
(Ord. 22573.)

## Part 19

### 1992 EARLY RETIREMENT INCENTIVE PROGRAM

#### Sections:

- 3.28.2200 Establishment.
- 3.28.2210 Eligibility requirements.
- 3.28.2220 Benefits incentive.
- 3.28.2230 Payout of leave balances.
- 3.28.2240 Part 9 applicability.
- 3.28.2250 Additional costs borne by city.

### 3.28.2200 Establishment.

There is hereby established the 1992 Early Retirement Incentive Program for those members of

this system who meet the eligibility requirements of Section 3.28.2210.  
(Ord. 24107.)

### 3.28.2210 Eligibility requirements.

A member of this system who meets all of the following eligibility requirements may participate in the 1992 Early Retirement Incentive Program established by this part and may be retired for service under such program:

- A. The member must, as of July 5, 1992, be employed by the city of San José. A member who, on July 5, 1992, is on an unpaid leave of absence from federated city service and has a right to return to service pursuant to the city's leave of absence policies, shall be deemed to be employed by the city for the purposes of this subsection A.
- B. The member must, as of the effective date of the member's retirement and no later than November 7, 1992, be entitled to credit for at least fifteen years of federated city service, as described in Section 3.28.610.B., paragraphs 1 through 6.
- C. The member must, as of the effective date of the member's retirement and no later than November 7, 1992, either:
  - 1. Be at least fifty-three years of age; or
  - 2. Be entitled to credit for at least twenty-eight years of federated city service.
- D. The member must file his or her written application for retirement pursuant to this part prior to September 15, 1992.
- E. The member's retirement for service must become effective on or before November 7, 1992.  
(Ord. 24107.)

### 3.28.2220 Benefits incentive.

Any provision of this chapter to the contrary notwithstanding, for a member who retires pursuant to Section 3.28.2210 the amount of the monthly retirement allowance under Section 3.28.1110.B., Section 3.28.1120.B. or Section 3.28.1130.B., shall be calculated in accordance with this section.

- A. Except as provided in subsections C. and D., in addition to the federated city service described in Section 3.28.610.B., paragraphs 1 through 6, which was earned by such member as of the date of retirement, a member who is at least fifty-three years of age and is entitled to credit for at least fifteen years of federated city service shall receive additional service credit for the lesser of:



1. The number of years of service credit such that, when added to the number of years of service credit already earned by the member, will total thirty years; or
  2. Two full years.
- B. Except as provided in subsections C. and D., in addition to the federated city service described in Section 3.28.610.B., paragraphs 1. through 6., which was earned by such member as of the date of retirement, a member who is entitled to credit for at least twenty-eight but less than thirty years of federated city service shall receive additional service credit for the number of years of service credit such that, when added to the number of years of service credit already earned by the member, will total thirty years.
- C. No member shall receive additional service credit under both subsections A. and B. If a member qualifies for additional service credit under both subsections A. and B., the member shall receive the additional service credit only under whichever subsection provides for the greater amount of additional service credit.
- D. For a member who is entitled to credit for at least thirty years of federated city service, no additional service credit shall be given. Instead, notwithstanding the provisions of Section 3.28.030.11, final compensation shall be defined to mean the highest compensation earned by such member during any consecutive twelve-month period of federated city service.  
(Ord. 24107.)

### 3.28.2230 Payout of leave balances.

Whenever any member who retires pursuant to Section 3.28.2210 is entitled to payout for accumulated sick leave and/or vacation, such payout shall be in two equal installments. The first installment shall be payable on January 8, 1993. The second installment shall be payable on January 7, 1994.  
(Ord. 24107.)

### 3.28.2240 Part 9 applicability.

The provisions of Part 9 of this chapter which are not inconsistent with or contrary to the provisions of this Part 19 shall apply to all persons who retire pursuant to Section 3.28.2210.  
(Ord. 24107.)

### 3.28.2250 Additional costs borne by city.

The city shall contribute to the retirement fund such amounts as are actuarially determined to be necessary to provide funding for all additional costs incurred by this retirement system because of the payment of benefits provided by this part to any city officers or employees which would not have been provided absent the adoption of this part.  
(Ord. 24107.)

## Part 20

### 1993 EARLY RETIREMENT INCENTIVE PROGRAM

#### Sections:

- 3.28.2300 Establishment.
- 3.28.2310 Eligibility requirements.
- 3.28.2320 Benefits incentive.
- 3.28.2330 Part 9 applicability.
- 3.28.2340 Additional costs borne by city.

#### 3.28.2300 Establishment.

There is hereby established the 1993 Early Retirement Incentive Program for those members of this system who meet the eligibility requirements of Section 3.28.2310.  
(Ord. 24346.)

#### 3.28.2310 Eligibility requirements.

A member of this system who meets all of the following eligibility requirements may participate in the 1993 Early Retirement Incentive Program established by this part and may be retired for service under such program:

- A. The member must, as of May 14, 1993, be employed by the city of San José. A member who, on May 14, 1993, is on an unpaid leave of absence from federated city service and has a right to return to service pursuant to the city's leave of absence policies, shall be deemed to be employed by the city for the purposes of this subsection A.
- B. The member must, as of the effective date of the member's retirement and no later than October 24, 1993, be entitled to credit for at least fifteen years of federated city service, as described in Section 3.28.610.B., paragraphs 1. through 6.

- C. The member must, as of the effective date of the member's retirement, and no later than October 24, 1993, either:
  - 1. Be at least fifty-three years of age; or
  - 2. Be entitled to credit for at least twenty-eight years of federated city service.
- D. The member must file his or her written application for retirement pursuant to this part prior to May 14, 1993.
- E. The member's retirement for service must become effective on or before October 24, 1993. (Ord. 24346.)

### 3.28.2320 Benefits incentive.

Any provision of this chapter to the contrary notwithstanding, for a member who retires pursuant to Section 3.28.2310, the amount of the monthly retirement allowance under Section 3.28.1110.B., Section 3.28.1120.B., or Section 3.28.1130.B., shall be calculated in accordance with this section.

- A. Except as provided in subsections C. and D., in addition to the federated city service described in Section 3.28.610.B., paragraphs 1. through 6., which was earned by such member as of the date of retirement, a member who is at least fifty-three years of age and is entitled to credit for at least fifteen years of federated city service shall receive additional service credit for the lesser of:
  - 1. The number of years of service credit such that, when added to the number of years of service credit already earned by the member, will total thirty years; or
  - 2. Two full years.
- B. Except as provided in subsections C. and D., in addition to the federated city service described in Section 3.28.610.B., paragraphs 1. through 6., which was earned by such member as of the date of retirement, a member who is entitled to credit for at least twenty-eight but less than thirty years of federated city service shall receive additional service credit for the number of years of service credit such that, when added to the number of years of service credit already earned by the member, will total thirty years.
- C. No member shall receive additional service credit under both subsections A. and B. If a member qualifies for additional service credit under both subsections A. and B., the member shall receive the additional service credit only under whichever subsection provides for the greater amount of additional service credit.

- D. For a member who is entitled to credit for at least thirty years of federated city service, no additional service credit shall be given. Instead, notwithstanding the provisions of Section 3.28.030.11, final compensation shall be defined to mean the highest compensation earned by such member during any consecutive twelve-month period of federated city service. (Ord. 24346.)

### 3.28.2330 Part 9 applicability.

The provisions of Part 9 of this chapter which are not inconsistent with or contrary to the provisions of this Part 20 shall apply to all persons who retire pursuant to Section 3.28.2310. (Ord. 24346.)

### 3.28.2340 Additional costs borne by city.

The city shall contribute to the retirement fund such amounts as are actuarially determined to be necessary to provide funding for all additional costs incurred by this retirement system because of the payment of benefits provided by this part to any city officers or employees which would not have been provided absent the adoption of this part. (Ord. 24346.)

## Part 21

## RECIPROCITY

### Sections:

- 3.28.2400 Purpose.
- 3.28.2410 Limitations on application of this part.
- 3.28.2420 Benefits.
- 3.28.2430 Special redeposit provisions.
- 3.28.2440 Information and data.
- 3.28.2450 Interpretation of this part.
- 3.28.2460 Modification of rights.
- 3.28.2470 Costs to be borne by city.

### 3.28.2400 Purpose.

The purpose of this Part 21 is to extend to the members of other public agency retirement systems which adopt similar reciprocal provisions into their retirement ordinances or plans pursuant to Sections 20042, 20043, 31840.2, or 45310.5 of the California Government Code or pursuant to the charter of a city

or a city and county or pursuant to the authority vested in any other public agency of the state of California (hereafter "reciprocal systems"), and which have entered into an agreement to establish a reciprocal retirement system with the California Public Employees' Retirement System, the rights in this retirement plan set forth in this Part 21. (Ord. 24682.)

### 3.28.2410 Limitations on application of this part.

A. Subject to Section 3.28.2460, the provisions of this Part 21 shall only apply to a person who satisfies the requirements of paragraph 1. or paragraph 2. of this subsection A.:

1. The person is a member of this retirement system, terminates his or her employment with the city, and:

- a. In the case where such termination of employment occurs between July 1, 1975, and December 31, 1975, inclusive, becomes a member of a reciprocal system within ninety days of such termination of employment; or
- b. In the case where such termination of employment occurs on or after January 1, 1976, becomes a member of a reciprocal system within six months of such termination of employment.

2. The person is a member of a reciprocal system, terminates his or her employment pursuant to which he or she was a member of such reciprocal system; and:

- a. In the case where such termination of employment occurred prior to July 1, 1975, became a member of the Chapter 3.24 system within ninety days of such termination of employment and became a member of this retirement system pursuant to Section 3.28.400, 3.28.410, 3.28.420, 3.28.430, or 3.28.440; or
- b. In the case where such termination of employment occurs between July 1, 1975, and December 31, 1975, inclusive, becomes a member of this retirement system within ninety days of such termination of employment; or
- c. In the case where such termination of employment occurs on or after January 1, 1976, becomes a member of this retirement system within six months of such termination of employment.

B. Except as provided in subsection C. below, the provisions of this Part 21 shall apply only to a member whose termination and entry into employment resulting in a change in membership from this retirement system to a reciprocal system, or from a reciprocal system to this retirement system, as provided in subsection A. above, occurred after the effective date specified in the agreement for reciprocal benefits between the board of administration of the public employees retirement system and the city council of the city of San José.

C. The provisions of this Part 21 relating to computation of final compensation shall apply to a member if such provisions would have applied had the member's termination and entry into employment occurred after the effective date of the agreement for reciprocal benefits.

(Ords. 24682, 25031.)

### 3.28.2420 Benefits.

The following provisions shall apply to a member who meets the requirements of Section 3.28.2410:

A. The member shall have the right to elect to leave his or her accumulated contributions on deposit in the federated city employees retirement fund irrespective of the amount of such contributions or the length of service credited to the member under this retirement system. Such election shall be irrevocable while membership in the reciprocal system continues.

B. For the purpose of the calculation of contribution rates of the city and the members, the age of entry for a person entering this retirement system from a reciprocal system shall be such person's age at entry into the reciprocal system.

C. The average monthly salary during any period of service as a member of a reciprocal system shall be considered compensation to a member of this retirement system for the purpose of computing final compensation for such member if all of the following conditions are satisfied:

1. The member has attained the age of fifty years; and
2. The member retires concurrently under both this retirement system and the reciprocal system; and
3. At the time of retirement, the member is credited with such period of service under the reciprocal system.

D. Solely for the purpose of meeting the minimum service requirements for qualification for benefits and retirement allowances under this retirement

system, service shall also include service as an officer or employee of a reciprocal system, if all of the following conditions are satisfied:

1. The member has attained the age of fifty years; and
2. The member retires concurrently under both this retirement system and the reciprocal system; and
3. The salary for service in the reciprocal system constitutes compensation of a member of this retirement system for purposes of calculating final compensation.

However, under no circumstances shall such service in a reciprocal system be included in the determination of service credit for qualification for medical benefits provided under Part 16 of this chapter or for qualification for dental benefits provided under Part 17 of this chapter.

E. A member shall be retired for disability and receive a retirement allowance based on the service credited to the member at the time of retirement during any period in which the member receives a disability retirement allowance under a reciprocal system, subject to the following limitations:

1. Such allowance shall not exceed an amount which when added to the allowance paid under the reciprocal system equals the allowance which would be paid for a nonservice-connected (nonindustrial) disability if all the member's service had been credited under the reciprocal system; and
2. Such allowance shall in no event be less than an annuity which is the actuarial equivalent of the member's contributions plus interest accumulated thereon calculated as of the retirement date, whether or not the disability is for service-connected (industrial) reasons.

F. The survivorship benefits or death benefits for a member who dies from nonservice-connected (nonindustrial) causes as a member of a reciprocal system shall not exceed an amount which when added to the survivorship and death benefits paid for such member under the reciprocal system equals the maximum death benefit payable under that system, subject to the following limitations:

1. Such survivorship and death benefits shall be at least the amount of the member's accumulated contributions plus the interest accrued thereon calculated as of the date of death; and

2. If death is caused by service-connected (industrial) injury or disease in the reciprocal system, the survivorship and death benefits shall be the amount of the member's accumulated contributions plus interest accrued thereon calculated as of the date of death.

(Ord. 24682.)

### 3.28.2430 Special redeposit provisions.

A. Notwithstanding Section 3.28.790, a former member of this retirement system who terminated city employment, other than for retirement or death, and who withdrew his or her accumulated contributions and the accrued interest may redeposit such withdrawn contributions and accrued interest and become eligible for the benefits under this Part 21 if the following requirements are satisfied:

1. The former member meets the requirements of Section 3.28.2410.
2. The former member redeposits all contributions and accrued interest previously withdrawn plus the interest that would have been earned by such contributions and interest, at the retirement fund's actual earnings rate, had they remained on deposit in the retirement fund.
3. Such redeposit is made within the time and in the manner prescribed by the board, such time not to extend beyond the date of such former member's retirement from this retirement system or from a reciprocal system, whichever first occurs.

B. In the event the former member begins redeposit under this section but before all the amounts specified in paragraph 2. of subsection A. above have been redeposited, the former member dies or retires from this retirement system or a reciprocal system:

1. Such amounts as have been redeposited shall be paid to the former member's designated beneficiary or, if no beneficiary has been designated, to the former member's estate in the event of the former member's death; or
2. Such amounts as have been redeposited shall be paid to the former member in the event of the former member's retirement.

C. This Section 3.28.2430 does not authorize the redeposit of contributions by a member of this retirement system in any case where the member withdrew contributions upon separation from city

service, but did not redeposit the contributions upon the member's reemployment. Redeposits of contributions upon reemployment shall be governed by Section 3.28.790.

(Ords. 24682, 25031.)

### 3.28.2440 Information and data.

On the request of a reciprocal system, the board shall supply information and data necessary for administration of the reciprocal system as it is affected by membership in and service credited under this retirement system.

(Ord. 24682.)

### 3.28.2450 Interpretation of this part.

Interpretations of the provisions of this Part 21 shall be made with reference to interpretations that have been made relative to the California Public Employees' Retirement System-1937 Act County Employees' Retirement reciprocal provisions upon which these provisions are based.

(Ord. 24682.)

### 3.28.2460 Modification of rights.

All rights under this Part 21 are subject to modification as may be necessary to conform to amendments to the Public Employees' Retirement Law or the County Employees' Retirement Law of 1937 as provided in California Government Code Section 20042.

(Ord. 24682.)

### 3.28.2470 Costs to be borne by city.

- A. The city shall contribute to the retirement fund such amounts as are actuarially determined to be necessary to provide funding for all additional costs incurred by this retirement system because of the payment of benefits provided by this Part 21 to any members which would not have been provided absent the adoption of this part.
- B. The contributions required of the city, if any, shall be determined beginning with the actuarial valuation performed as of July 1, 1997, or, if no valuation is performed as of that date, the first valuation performed thereafter, except that an earlier actuarial valuation date may be used if the retirement board determines that earlier contributions are required to maintain the actuarial soundness of this retirement system.

(Ord. 24682.)

## Part 22

### PURCHASE OF PRIOR SERVICE CREDIT

#### Sections:

3.28.2500 Prior service credit.

3.28.2510 Eligibility requirements.

3.28.2520 Contributions for purchase of prior service credit.

3.28.2530 Service credit.

3.28.2540 Election to purchase prior service credit.

### 3.28.2500 Prior service credit.

- A. Subject to the conditions, limitations and requirements set forth in this Part 22, a member of this system may purchase service credit in this system for eligible prior service.
- B. For the purposes of this part, "eligible prior service" means service performed by the member as an employee of the city but for which the member was ineligible for service credit in this system at the time such service was performed and the service was in one of the following categories:

1. Service performed in a part-time position for which the member would have received service credit had the employment been on a full-time basis; or
2. Service pursuant to the emergency employment act; or
3. Service pursuant to the comprehensive employment and training act; or
4. Service performed on or after January 1, 1986, pursuant to an employment contract with the city.

Eligible prior service does not include service performed as an independent contractor.

- C. In the event there is any dispute regarding a member's eligibility to purchase prior service credit, the amount of eligible prior service, the contributions and interest to be paid for the purchase of credit, or the amount of service to be credited to a member, the board shall determine the issue based on the relevant information presented to the board.

(Ord. 25732.)

### 3.28.2510 Eligibility requirements.

In order to purchase credit for eligible prior service, the member must satisfy all of the following conditions:

- A. The member must file a written election to purchase credit for eligible prior service in accordance with Section 3.28.2540.
  - B. The member must pay into the retirement fund contributions for the prior service credit as provided in Section 3.28.2520, plus interest on the unpaid balance of all such contributions from the effective date of the member's election to the date the contributions are fully paid into the retirement fund. The interest rate shall be the actuarial assumed interest rate, as adopted by the board, which is in effect on the effective date of the election.
  - C. The member must be a member of this system who is making contributions to the retirement fund and is performing federated city service at all of the following times: on November 24, 1998, at the time of filing the written election and at all times during the contribution period.
- (Ord. 25732.)

### 3.28.2520 Contributions for purchase of prior service credit.

- A. A member may elect to purchase credit for all or a portion of the member's eligible prior service.
- B. For each year of eligible prior service the member elects to purchase, the member shall contribute to the retirement fund:
  - 1. An amount equal to the total contribution rate (city plus member) in effect as of the date the member files the election to purchase credit, multiplied by the member's compensation earnable as of the date of such election; or
  - 2. In the case of a member who will retire within one year of the date of the election to purchase eligible prior service, an amount equal to the total contribution rate (city plus member) in effect as of the date the member files the election to purchase credit, multiplied by the member's final compensation calculated as if the member retired as of the date of such election.
- C. Notwithstanding subsection B. above, in the case of a member who served as a council assistant from November 2, 1996, through June 25, 1997, and who elects to purchase credit for eligible prior service for that period of time or any portion thereof, the city shall pay the portion of the required contributions that is equivalent to the product of:

- 1. The city's contribution rate in effect as of the date the member files the election to purchase credit;
- 2. The number of years of service during the period from November 2, 1996, through June 25, 1997, the member elects to purchase; and
- 3. The member's compensation, as described in paragraph B. 1. or 2., as applicable.

The member shall contribute the difference between the required contributions calculated in accordance with subsection B. and the amount contributed by the city pursuant to this subsection C.

- D. The contribution for any portion of a year of eligible prior service shall be prorated.
- E. Subject to any limits on annual contributions imposed by Section 415 of the Internal Revenue Code of 1986, as amended, any member who elects to purchase credit for eligible prior service may pay the contributions and interest specified in this section:
  - 1. In one lump sum within sixty days from and after the date said member files his or her written election to purchase credit; or
  - 2. In monthly or biweekly installments paid over a period of time not to exceed eight years; or
  - 3. A combination of a lump sum and installments.

(Ord. 25732.)

### 3.28.2530 Service credit.

- A. Except as provided in subsection C. below, if a member elects to purchase credit for eligible prior service and pay the contributions and interest specified in this part and subsequently does pay such contributions and interest, the member shall become entitled to credit under this system for all the eligible prior service for which such contributions and interest are paid.
- B. If a member elects to purchase credit for eligible prior service and pay the contributions and interest specified in this part but fails to complete the required payments because of death before retirement, retirement, or other separation from city service, the member shall be credited with the amount of service which is determined by the board to be attributable to the contributions and interest paid as of the date of the member's death, retirement, or other separation from city service.

C. If the calculation of contributions for the purchase of eligible prior service was based on the member's final compensation (as described in Section 3.28.2520B.2.), but the member fails to retire within one year of the date of the election, then the prior service credited to the member shall be reduced to the amount of service credit which the member would have purchased had the calculation been based on the member's compensation earnable as of the date of the election (as described in Section 3.28.2520B.1.). (Ord. 25732.)

### 3.28.2540 Election to purchase prior service credit.

- A. The secretary of the retirement board shall cause written notice to be personally delivered or mailed to each member who has eligible prior service, informing such member of his or her rights under this part. If mailed, such notice shall be mailed to the member at the latest address as shown in the records of the human resources department of the city.
- B. If the member wishes to purchase credit for eligible prior service, the member shall file a written notice of election to do so with the secretary of the retirement board.
- C. If the member elects to pay the contributions and interest in installments, or if the member elects to make the lump sum payment by payroll deduction, the member shall execute a binding irrevocable payroll authorization form authorizing the payment of the required contributions and interest by payroll deductions. The payroll authorization form shall be filed with the director of finance.
- D. If a member does not file the notice of election or the payroll authorization form, or elects to pay required contributions in a manner or at a time or times not authorized by this part, that member shall be deemed to have elected not to purchase credit for eligible prior service and shall be deemed to have elected not to have the prior service credited to him or her.
- E. The election to purchase credit for eligible prior service through payroll deductions and the authorization to make contributions by payroll deductions shall be irrevocable. During the time the irrevocable election is in effect, no direct payments from the member to the retirement fund

shall be made by the member or accepted by this system.  
(Ord. 25732.)

## Part 23

### PLAN-APPROVED DOMESTIC RELATIONS ORDERS

#### Sections:

- 3.28.2600 Purpose and applicability.
- 3.28.2610 Compliance with plan-approved domestic relations orders.
- 3.28.2620 "Domestic relations order" defined.
- 3.28.2630 "Participant" and "alternate payee" defined.
- 3.28.2640 "Nonmember spouse" and "nonmember domestic partner" defined.
- 3.28.2650 "Plan-approved domestic relations order" defined.
- 3.28.2660 Dissolution or legal separation before the participant has separated from city service.
- 3.28.2670 Dissolution or legal separation after the participant has separated from city service.
- 3.28.2680 Combined account option.
- 3.28.2690 Alternate distribution option for alternate payee.
- 3.28.2700 Separate account option.
- 3.28.2710 Distribution of accumulated contributions in separate account.
- 3.28.2720 Participant's redeposit of contributions refunded to alternate payee.
- 3.28.2730 Monthly allowance for alternate payee.
- 3.28.2740 Monthly allowance for participant.
- 3.28.2750 Designation of beneficiary by alternate payee.
- 3.28.2760 No payments resulting in increased benefits.
- 3.28.2770 Disability retirement of participant.

**3.28.2600 Purpose and applicability.**

- A. The purpose of this Part 23 is to set forth the requirements for plan-approved domestic relations orders that may be awarded by a court in a dissolution of marriage, a legal separation action, or a termination of a registered domestic partnership with respect to community property rights in benefits provided by this plan.
- B. This part shall apply only in those dissolution of marriage, legal separation or termination of domestic partnership proceedings which meet one of the following requirements:
  1. The proceedings are instituted on or after October 14, 2005; or
  2. The proceedings are pending on October 14, 2005, and the court has not yet awarded the benefits; or
  3. The court has reserved jurisdiction over the retirement benefits or has not yet awarded the benefits; or
  4. The court issues a supplemental order with respect to the division of the community property rights in benefits provided by this plan.
- C. If benefits are payable pursuant to a qualified domestic relations order that meets the requirements of a domestic relations order as defined in Section 414(p) of the Internal Revenue Code, then the applicable requirements of Section 414(p) of the Internal Revenue Code shall be followed by the retirement plan.

(Ords. 27521, 28885.)

**3.28.2610 Compliance with plan-approved domestic relations orders.**

The board of administration shall comply only with domestic relations orders that are plan-approved domestic relations orders pursuant to this part. The board shall not authorize payments to a nonmember spouse or nonmember domestic partner pursuant to any order which does not meet the requirements of a plan-approved domestic relations order.

(Ord. 27521.)

**3.28.2620 "Domestic relations order" defined.**

"Domestic relations order" or "DRO" means any judgment, decree or order (including court approval of a property settlement agreement) which relates to marital property rights in the case of a marital dissolution, termination of a registered domestic partnership, legal separation, and which is made pursuant to a state domestic relations law.

(Ord. 27521.)

**3.28.2630 "Participant" and "alternate payee" defined.**

- A. "Participant" means a member of this plan, a retired member of this plan, or a former member of this plan who separated from city service but left his or her accumulated contributions on deposit with the plan.
- B. "Alternate payee" means a nonmember spouse or nonmember domestic partner as defined in Section 3.28.2640.

(Ord. 27521.)

**3.28.2640 "Nonmember spouse" and "nonmember domestic partner" defined.**

- A. "Nonmember spouse" means the spouse or former spouse of a participant of this plan who, as a result of petitioning a court of competent jurisdiction for the division of community property, has been awarded an interest in the benefits payable to a participant in this plan. A spouse or former spouse who is awarded an interest in such benefits shall not be or become a participant of this plan by virtue of such award or the payment of such benefits.
- B. "Nonmember domestic partner" means the registered domestic partner or former registered domestic partner of a participant of this plan who, as a result of petitioning a court of competent jurisdiction for the division of community property, has been awarded an interest in the benefits payable to a participant in this plan. "Registered" means the parties established a domestic partnership pursuant to Division 2.5 of the California Family Code or formed a legal union other than a marriage in a jurisdiction other than California and such union is recognized as a domestic partnership pursuant to California Family Code Section 299.2. A nonmember domestic partner who is awarded an interest in such benefits shall not be or become a participant of this plan by virtue of such award or the payment of such benefits.

(Ord. 27521.)

**3.28.2650 "Plan-approved domestic relations order" defined.**

- A. "Plan-approved domestic relations order" means a domestic relations order which:

1. Sets forth an alternate payee's right to receive a portion of the benefits payable to a participant of this plan;



2. Pursuant to Section 2610 of the California Family Code, orders the division of the community interest in the benefits payable to a participant; and
3. Meets the requirements of this part.
- B. A DRO is a plan-approved domestic relations order only if the plan has been joined in the dissolution of marriage, termination of domestic partnership, or legal separation action pursuant to Chapter 6 (commencing with Section 2060) of Part 1 of Division 6 of the California Family Code.
- C. A DRO is a plan-approved domestic relations order only if the order clearly specifies that it:
  1. Does not require the plan to provide any type or form of benefit, or any option, not otherwise provided under the plan; and
  2. Does not require the plan to provide benefits (determined on the basis of actuarial value) in excess of those provided by the plan.
- D. A DRO is not a plan-approved domestic relations order if it provides for any of the following:
  1. Payment from this plan to an alternate payee at any time prior to the date the participant has both separated from city service and begun to receive payments from this plan, except as provided in Section 3.28.2700, Section 3.28.2720, or Section 3.28.2730.
  2. Payment from this plan because of the disability of the alternate payee.
  3. Payment from this plan of any premium, or portion thereof, for medical or dental insurance coverage for the alternate payee.
  4. Designation of the alternate payee as a surviving spouse or surviving domestic partner for the purpose of receiving any surviving spouse benefit, surviving domestic partner benefit, or death benefit provided under this plan on account of the death of the participant.
  5. The alternate payee to make any contributions to the plan or the retirement fund or to purchase service credit in the plan.

(Ord. 27521.)

**3.28.2660 Dissolution or legal separation before the participant has separated from city service.**

If marital dissolution, termination of domestic partnership, or legal separation occurs before the participant has separated from city service, and the court orders the division of the community interest in

this plan pursuant to Section 2610 of the Family Code, then the DRO will be a plan-approved domestic relations order if, in addition to the requirements of Section 3.28.2650, it meets the requirements of Section 3.28.2680 or Section 3.28.2700. (Ord. 27521.)

**3.28.2670 Dissolution or legal separation after the participant has separated from city service.**

If the marital dissolution, termination of domestic partnership, or legal separation occurs after the participant has separated from city service, whether for retirement, resignation or any other reason, and the court orders the division of the community interest in this plan pursuant to Section 2610 of the Family Code, then:

- A. In order to be a plan-approved domestic relations order the DRO must satisfy the requirements of Section 3.28.2680.
- B. The separate account option set forth in Section 3.28.2700 shall not be available, and the DRO shall not order the establishment of a separate account for the alternate payee.
- C. The DRO shall not in any way change any election made by the participant at the time of retirement or other separation from city service. (Ord. 27521.)

**3.28.2680 Combined account option.**

- A. If the court orders the division of the community interest in this plan pursuant to Section 2610 of the Family Code, the board will comply with a DRO which divides the community property interests of a participant and the participant's alternate payee, provided that the DRO meets all of the following requirements:
  1. Is a plan-approved domestic relations order under Section 3.28.2650.
  2. Includes the date of the marriage or date of establishing the domestic partnership and the date on which the parties separated.
  3. Includes the last known mailing address of the alternate payee covered by the order.
  4. Specifies the amount or percentage of the participant's monthly benefit, or the participant's accumulated contributions in the event the participant elects a withdrawal of accumulated contributions, which is to be paid to the alternate payee, or specifies the manner in which such amount or percentage is to be determined.
  5. Subject to Sections 3.28.2750 and 3.28.2760, specifies the portion of the

participant's monthly disability benefits which is to be paid to the alternate payee and the time when such payment to the alternate payee is to commence:

- a. In the event the participant retires for disability after the date of the dissolution of marriage, termination of domestic partnership, or legal separation, but prior to the time the participant is eligible to retire for service; or
  - b. In the event the participant has already retired for disability as of the date of the dissolution of marriage, termination of domestic partnership, or legal separation.
6. Specifies that the plan shall pay the alternate payee's portion of the benefits to the alternate payee only at such time or times as the plan makes payments to the participant.
  7. Specifies that, unless the alternate payee has elected a life annuity option pursuant to Section 3.28.2690, payments by the plan to the alternate payee shall terminate when payments to the participant (or the participant's eligible surviving spouse or the participant's eligible surviving domestic partner) terminate.
  8. Specifies that the alternate payee shall not be entitled to payment from the plan of any premium, or portion thereof, for medical or dental insurance coverage.
  9. Specifies that the alternate payee shall not be deemed an eligible surviving spouse or eligible surviving domestic partner under the terms of the plan.
  10. Specifies that the plan may offset any payments made by the plan to either party for any amounts to which the other party was entitled, but which were erroneously paid to the party against whom the offset is made.
- B. In addition to the requirements of subsection A., the DRO may address the rights of the alternate payee with respect to the following:
1. In accordance with Section 3.28.2740, the right to designate a beneficiary.
  2. The right to elect an alternate distribution option pursuant to Section 3.28.2690.
- (Ord. 27521.)

### 3.28.2690 Alternate distribution option for alternate payee.

- A. In the event the alternate payee is awarded a combined account, the alternate payee may elect

an alternate distribution option as provided in this section by filing a written election with the retirement board on a form provided by the secretary to the board. The election must be filed no earlier than the time the participant files an application for retirement and no later than thirty days after the effective date of the participant's retirement.

- B. Any election made pursuant to the provisions of this section may be revoked by the alternate payee provided that the revocation is made in writing and is filed with the retirement board no later than thirty days after the effective date of the participant's retirement. If the election is not revoked within thirty days of the effective date of the participant's retirement, the election shall be irrevocable and benefits shall be paid in accordance with the election and the provisions of this plan.
- C. The alternate distribution option consists of an election to have the actuarial equivalent of any allowance payable to the alternate payee from the combined account applied to provide a lesser monthly allowance to the alternate payee until the participant's death and, thereafter, to continue such lesser monthly allowance to the alternate payee for the life of the alternate payee.
- D. Any age factor used in the calculation of benefits payable under the alternate distribution option shall be based on the ages of the participant and the alternate payee as of the date benefits first become payable to the participant.

(Ord. 27521.)

### 3.28.2700 Separate account option.

- A. If the court orders the division of the community interest in this plan pursuant to Section 2610 of the Family Code, and the participant has not separated from city service at the time of the entry of the DRO, the court may order that the accumulated employee contributions and service credit attributable to periods of the participant's service during the marriage shall be divided into two separate and distinct accounts in the name of the participant and the alternate payee, respectively.
- B. Any accumulated contributions or service credit that are not explicitly awarded by the DRO shall be deemed to be the exclusive property of the participant.
- C. The board will comply with a DRO which orders the establishment of separate accounts provided

that the DRO meets all of the following requirements:

1. Is a plan-approved domestic relations order under Section 3.28.2650.
2. Includes the date of the marriage and the date on which the parties separated.
3. Includes the last known mailing address of the alternate payee covered by the order.
4. Specifies the amount or percentage of the accumulated contributions and service credit to be credited to the alternate payee's separate account or specifies the manner in which such amount or percentage is to be determined.
5. Specifies the rights of the alternate payee with respect to the following:
  - a. In accordance with Section 3.28.2710, the right to a refund of accumulated employee contributions and interest.
  - b. In accordance with Section 3.28.2730, the right to receive a monthly allowance.
  - c. In accordance with Section 3.28.2740, the right to designate a beneficiary.
6. Specifies that, in the capacity of alternate payee, the alternate payee shall not be entitled to any of the following:
  - a. Payment from the plan because of the disability of the alternate payee.
  - b. Payment from the plan of any death benefit or survivor's benefit payable because of the death of the participant.
  - c. Payment from the plan of any premium, or portion thereof, for medical or dental insurance coverage.

(Ord. 27521.)

### 3.28.2710 Distribution of accumulated contributions in separate account.

- A. If the court orders the establishment of separate accounts pursuant to Section 3.28.2700 and, as of the date of entry of the DRO with the court, the participant is entitled to less than ten years of service credit in this plan, the alternate payee shall receive a distribution of the accumulated contributions and credited interest placed in the alternate payee's account.
- B. If, as of the date of entry of the DRO with the court, the participant is entitled to ten or more years of service credit in this plan, the alternate payee may elect to receive a distribution of the accumulated contributions and credited interest placed in the alternate payee's account.

1. The alternate payee may make such election at any time after the establishment of the alternate payee's separate account.
2. The alternate payee shall make such election by filing an application for distribution with the secretary to the board on a form provided by the secretary.
- C. Any distribution of accumulated contributions made to an alternate payee shall be effective when the plan deposits in the United States mail a warrant drawn in favor of the alternate payee and addressed to the latest address for the alternate payee on file with the plan, or to such other address as is specified in writing by the alternate payee.
- D. Once a distribution made pursuant to this section becomes effective:
  1. The alternate payee may not cancel the refund or revoke the election for distribution.
  2. The alternate payee shall be deemed to have permanently waived all rights in this plan and all rights to the payment of any other benefits pertaining to the service credit or accumulated contributions, or both, in the alternate payee's separate account; and
  3. The alternate payee shall have no right to redeposit the distributed accumulated contributions.

(Ord. 27521.)

### 3.28.2720 Participant's redeposit of contributions refunded to alternate payee.

If an alternate payee receives a refund under Section 3.28.2710, the participant may elect to redeposit the accumulated contributions and interest refunded to the alternate payee and to receive credit for the service that had been allocated to the alternate payee.

- A. Such election shall be made within five years after notice to the participant from the secretary to the board of the participant's option to redeposit the contributions.
- B. The participant shall make such election by filing a written statement of election with the secretary to the board on a form provided by the secretary.
- C. Except as provided in paragraph 1. of subsection F. below, the participant shall not be entitled to receive credit for the service that had been allocated to the alternate payee unless, prior to

the date the participant retires the participant redeposits:

1. All contributions and interest distributed to the alternate payee; plus
  2. All additional interest which would have been earned on the distributed contributions and interest at the actual rate earned by the retirement fund, as of the date the participant elects to redeposit, if the contributions and interest had not been distributed to the alternate payee; plus
  3. Interest on the unpaid balance from the date the participant elects the redeposit to the date all such moneys and interest are fully redeposited into the retirement fund, at the actuarial rate in effect on the date the participant files the election.
- D. Such redeposit shall be made within the time and in the manner provided by the board.
- E. If the participant does not make the election within the time provided herein, the participant shall be deemed to have elected not to have such service credited to the participant.
- F. If the participant elects to redeposit contributions and interest refunded to the alternate payee but does not redeposit all required amounts plus interest within the time and in the manner provided by the board, then:
1. If the failure to complete the redeposit is because of the death of the participant, while a member of this plan but prior to retirement, the participant shall be credited with the amount of service that is determined by the board to be attributable to the amount of payments made as of the date of the participant's death.
  2. If the failure to complete the redeposit is for any reason other than the death of the participant prior to retirement, any payments made pursuant to the election shall be credited to the participant's accumulated contributions account but the participant shall receive no service credit that had been allocated to the alternate payee.

(Ord. 27521.)

### 3.28.2730 Monthly allowance for alternate payee.

- A. An alternate payee who has been awarded a separate account shall be paid a monthly allowance from the retirement fund, for the life of the alternate payee, if all of the following conditions are satisfied:

1. The alternate payee has not received a refund of accumulated contributions.
  2. Notwithstanding any service credit awarded to the alternate payee as of the date the alternate payee files an application for monthly benefits:
    - a. The participant is eligible to retire for service under provisions of this plan; or
    - b. In the case where the participant retired for disability or died prior to becoming eligible for service retirement, the participant would have been eligible to retire for service had the participant continued working; or
    - c. In the case of a participant who left city service without retiring, the participant is eligible to receive a monthly allowance under Part 9 of this chapter, or would have been eligible had the participant not elected a refund of his or her accumulated contributions.
  3. The alternate payee has attained at least fifty-five years of age.
  4. The alternate payee files a written application for monthly benefits with the secretary to the board on a form provided by the secretary.
  5. The board approves the payment of such monthly allowance.
- B. The monthly allowance to the alternate payee shall begin to accrue on the later of the date designated in the alternate payee's application or the day following the date of the court order dividing the community property of the participant and the alternate payee. In no event shall the monthly allowance begin to accrue earlier than the first day of the month in which the alternate payee's application is received by the secretary to the board.
- C. Subject to the provisions of Section 3.28.2750 and 3.28.2760 and subsection D. of this section, the amount of the monthly allowance payable to the alternate payee shall be two and one-half percent of the participant's final compensation for each year of service credit credited to the alternate payee's separate account.
- D. For the purposes of this section:
1. If the alternate payee elects to receive a monthly allowance prior to the date the participant retires, "final compensation" means the final compensation of the participant as of the effective date of the

first payment of the alternate payee's allowance.

2. If the participant retired either for service or disability prior to the effective date of the payment of the alternate payee's allowance, "final compensation" means the final compensation used in calculating the participant's retirement allowance.

E. Monthly allowances payable to the alternate payee shall be increased by cost-of-living adjustments in accordance with Chapter 3.44.

(Ord. 27521.)

### 3.28.2740 Monthly allowance for participant.

A. If the court orders the establishment of separate accounts pursuant to Section 3.28.2700 and, as of the date the participant separates from service, the alternate payee has not received a distribution pursuant to Section 3.28.2710, then the monthly allowance payable to the participant upon the participant's eligibility for a monthly allowance shall be:

1. The monthly allowance that would be payable to the participant if no separate account had been established; less
2. The monthly allowance payable to the alternate payee pursuant to subsection C. of Section 3.28.2730.

B. If the court orders the establishment of separate accounts pursuant to Section 3.28.2700 and, as of the date the participant separates from service, the alternate payee has received a distribution pursuant to Section 3.28.2710 but the participant has received credit pursuant to Section 3.28.2720 for the service that had been allocated to the alternate payee, then the monthly allowance payable to the participant upon the participant's eligibility for a monthly allowance shall be the monthly allowance that would be payable to the participant if no separate account had been established.

C. If the court orders the establishment of separate accounts pursuant to Section 3.28.2700 and, as of the date the participant separates from service, the alternate payee has received a distribution pursuant to Section 3.28.2710 and the participant has not made a redeposit pursuant to Section 3.36.3620, then the monthly allowance payable to the participant upon the participant's eligibility for a monthly allowance shall be:

1. The dollar amount of the monthly allowance that would be payable to the participant if no separate account had been established; less

2. The dollar amount of the monthly allowance that would have been payable to the alternate payee pursuant to subsection C. of Section 3.28.2730 if the alternate payee had not received a distribution.

(Ord. 27521.)

### 3.28.2750 Designation of beneficiary by alternate payee.

A. The alternate payee who has been awarded a combined account may designate a beneficiary to receive amounts which would be payable to the alternate payee but for the death of the alternate payee.

B. The alternate payee who has been awarded a separate account may designate a beneficiary:

1. To receive the accumulated contributions in the alternate payee's account in the case where the alternate payee dies prior to receipt of payment.
2. To receive any accumulated contributions remaining in the alternate payee's separate account or to receive any unpaid allowance payable at the time of the alternate payee's death.

C. The beneficiary shall be a natural person or persons. The designation may be by class, in which case the members of the class living at the time of the alternate payee's death shall be deemed to be the beneficiaries and shall take in equal shares unless otherwise specified by the alternate payee.

D. A designation of a beneficiary shall be filed with the secretary to the board on a form provided by the secretary.

E. The alternate payee may revoke or change the designation of a beneficiary at any time prior to the alternate payee's death. Any revocation or change of a designation of a beneficiary shall be in writing on a form provided by the secretary to the board, shall be notarized by a notary public, and shall be filed with the secretary.

F. If the alternate payee does not designate a beneficiary or if all designated beneficiaries predecease the alternate payee:

1. In the case of an alternate payee who has been awarded a combined account, any payments which would have been made to the alternate payee but for the death of the alternate payee shall be paid to the alternate payee's estate.
2. In the case of an alternate payee who has been awarded a separate account, any

accumulated contributions remaining in the alternate payee's separate account and any unpaid monthly allowance payable at the time of the alternate payee's death shall be paid to the alternate payee's estate.

- G. Nothing in this section shall be deemed to mean that any alternate distribution option elected by an alternate payee shall continue beyond the death of the alternate payee. Payments of any amounts under an alternate distribution option cease upon the death of the alternate payee. Payment of any such amount to the alternate payee's beneficiary or estate is expressly limited to the monthly allowance, or portion thereof, due but unpaid for the month in which the death of the alternate payee occurs.

(Ord. 27521.)

**3.28.2760 No payments resulting in increased benefits.**

- A. Under no circumstances shall the board or this plan be required to make payments in any manner that would result in an increase in the amount of benefits provided under this plan.
- B. All benefits payable from this plan shall be determined on the basis of the actuarial assumptions and interest rates that are specifically set forth in this plan, or the economic and demographic actuarial assumptions and interest rates adopted by the board in those instances where the board has such authority under the provisions of this plan.
- C. Any age factor used in calculation of benefits to the alternate payee shall be based on the age of the alternate payee at the time benefits commence or, in the case where the alternate payee elects an alternate distribution option pursuant to Section 3.28.2690, as of the date benefits first become payable to the participant.

(Ord. 27521.)

**3.28.2770 Disability retirement of participant.**

- A. If the participant retires for disability, the combined benefit payments to both the participant and the alternate payee shall not exceed the amount that would otherwise have been paid to the participant alone.
- B. In the case where the alternate payee has been awarded a separate account, no payment shall be made to the alternate payee until such time as the participant would have been eligible for a service retirement had the participant continued working.

Disability benefits shall be allocated between the participant and the alternate payee as follows:

1. Until the date the participant would have been eligible for a service retirement or the date the alternate payee applies to receive a monthly allowance, whichever date is later, disability retirement benefits shall be paid to the participant without regard to the service credit awarded to the alternate payee.
2. Once the participant would have been eligible for a service retirement had the participant continued working and the alternate payee applies to receive a monthly allowance from the retirement fund, the amount of the monthly allowance payable to each party shall be determined as though the participant had retired for service.

(Ord. 27521.)

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**SAN JOSÉ, CALIFORNIA**  
2012 S-20 Supplement - Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through June 30, 2012. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current year and revision number appearing on the lower left corner of each page revised in this package is "2012 S-20." If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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2185 - 2192 . . . . .	2185 - 2192
2199 - 2210 . . . . .	2199 - 2210.b
2213, 2214 . . . . .	2213, 2214
2237, 2238 . . . . .	2237, 2238

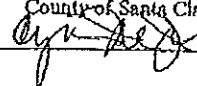
The foregoing instrument is  
a correct copy of the original  
on file in this office.

Attest:

**TONI J. TABER**

Acting City Clerk

Acting City Clerk of the City of San Jose  
County of Santa Clara State of California

By  2/4/13, Deputy